

Report on the

Board of Funeral Service

Montgomery, Alabama



Department of Examiners of Public Accounts

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Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Board of Funeral Service in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Board of Funeral Service, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,



Ronald L. Jones
Chief Examiner

Examiners
Christine Parish
Julie Garner

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PROFILE

Purpose/Authority

Act 214, *Acts of Alabama 1975*, codified as the *Code of Alabama 1975*, Sections 34-13-1 through 34-13-152 created the Alabama Board of Funeral Service to regulate procedures for making final disposition of human dead, including embalming and funeral directing. Act 2006-608, *Acts of Alabama 2006*, codified as the *Code of Alabama 1975*, Section 22-19-5 requires the board to approve an identification system for dead human bodies to be followed by funeral establishments.

Characteristics

Members and Selection	7 members Appointed by the Governor from a list three nominees selected by the licensees of the board. Only one funeral director from each licensed establishment may vote for a nominee. <i>Code of Alabama 1975</i> , Section 34-13-20 and 21.
Term	<ul style="list-style-type: none">• Two-year terms• May be reappointed for an additional 2-year term• No more than a total of four years. <i>Code of Alabama 1975</i> , Section 34-13-20
Qualifications	United States citizen and Alabama resident <ul style="list-style-type: none">• Four must be licensed, practicing embalmers with ten years experience.• Three must be licensed, practicing funeral directors with ten years experience who are also operators of funeral establishments.• Members must continue active practice during their terms. <i>Code of Alabama 1975</i> , Section 34-13-20
Racial Representation	Not more than four members may be members of the same race. <u>Current Membership</u> <ul style="list-style-type: none">• 3 White• 4 Black <i>Code of Alabama 1975</i> , Section 34-13-20

Geographical Representation	<p>Members must represent the seven congressional districts. Each of the current members represents one congressional district.</p> <p><i>Code of Alabama 1975</i>, Section 34-13-21</p>
Consumer Representation	No statutory requirement.
Other Representation	No other specific representation required.
Compensation	<ul style="list-style-type: none"> • Necessary traveling expenses incident to attendance upon the business of the board. • \$50.00 per day, not to exceed 10 days per year. <p><i>Code of Alabama 1975</i>, Section 34-13-23</p>
<u>Operations</u>	
Administrator	<p>Warren Higgins, Executive Secretary</p> <ul style="list-style-type: none"> • Appointed by the board • Annual salary \$63,563.50 set by the board. • Receives necessary traveling and other incidental expenses as incurred in the performance of duties <p><i>Code of Alabama 1975</i>, Section 34-13-23</p>
Location	<p>Alabama Statehouse 11 South Union Street, Suite 21 Montgomery, AL 36130</p>
Examinations	<ul style="list-style-type: none"> • National funeral director and embalmer examinations Compiled and graded by the Conference of Funeral Service Examining Boards. • State law exam - compiled and graded by the board. • Quarterly (In Montgomery) • All examinations are administered by the Alabama Board of Funeral Service <p>The board was unable to provide pass/fail results.</p> <p><i>Code of Alabama 1975</i>, Section 34-13-22, 50, 70, 72-73, and 90-94</p>

Renewals	<ul style="list-style-type: none"> • All licenses expire on October 1 of each year. • If not renewed by the expiration date, the board may reinstate the license within six months of expiration upon payment of all fees due and a \$25.00 penalty. <p><i>Code of Alabama 1975</i>, Section 34-13-53 and 55</p>																
Licensees	<table> <tr> <td>Funeral Directors -</td><td>1,712</td></tr> <tr> <td>Embalmers -</td><td>808</td></tr> <tr> <td>Practical Embalmers -</td><td>131</td></tr> <tr> <td>Apprentice Funeral Directors -</td><td>399</td></tr> <tr> <td>Apprentice Embalmers -</td><td>174</td></tr> <tr> <td>Establishments -</td><td>442</td></tr> <tr> <td>Crematories -</td><td><u>23</u></td></tr> <tr> <td>Total 9/30/06</td><td><u>3,689*</u></td></tr> </table> <p>*The board could not provide the numbers of its various types of licensees. The numbers were derived by counting the licensees shown on a list of licensees provided by the board.</p>	Funeral Directors -	1,712	Embalmers -	808	Practical Embalmers -	131	Apprentice Funeral Directors -	399	Apprentice Embalmers -	174	Establishments -	442	Crematories -	<u>23</u>	Total 9/30/06	<u>3,689*</u>
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Reciprocity	<p>The board may, but is not required to issue reciprocal licenses for funeral directing and embalming, if the board determines that the applicant's qualifications meet Alabama's minimum qualifications and that a written examination would be superfluous.</p> <p><i>Code of Alabama 1975</i>, Section 34-13-51</p>																
Continuing Education	No statutory requirement – Of the surrounding states, only Alabama and Mississippi do not require continuing education as a condition of license renewal.																
Employees	3 at-will employees (non-merit system, no contract)																
Legal Counsel	Jeffery H. Long, Assistant Attorney General																
Subpoena Power	<p>The board can subpoena witnesses. No mention of the subpoena of records is made in the board's licensing law.</p> <p><i>Code of Alabama 1975</i>, Section 34-13-26 (d)</p>																
Internet Presence	<p>There board has no Internet website.</p> <p>Board employees have e-mail accounts provided by the Information Systems Division of the Department of Finance.</p>																

Attended Board Member Training	6 board members, the executive secretary, and the associate secretary attended the training on August 23, 2006.
<u>Financial</u>	
Source of Funds	The board receives funds from application fees, original licensure fees, renewal fees, inspection fees, and penalties.
State Treasury	The board operates from the State Treasury (Fund 0362).
Unused Funds	The board retains its remaining fund balances at year end. <i>Code of Alabama 1975</i> , Section 34-13-23 (h)

SIGNIFICANT ITEMS

1. Failure of the board's offices to embrace electronic technology limits the board's ability to perform its work.

The board does not maintain an Internet website. Minutes of the board's July 25, 2006 board meeting show a unanimous desire by the board to have a website. One establishment licensee responding to our survey responded "Suggestions: 1) Need to have a website 2) computerize the office". At the board's January 30, 2007 meeting, the executive secretary informed the board that the website should be available in the next few months.

The International Conference of Funeral Service Examining Boards Internet website indicates that of the fifty (50) states and the Virgin Islands, only eight (8) state funeral service boards did not have an Internet website as of March 26, 2007. Of those eight, five do not list an email address.

State Funeral Service Board's Lacking Internet Presence	
No website	No email
Alabama	Alabama
Arizona	Arizona
Hawaii	Hawaii
Kentucky	
Nevada	Nevada
New York	
North Dakota	
Wyoming	Wyoming

The board pays for email addresses for the board staff, supplied and maintained by the Department of Finance Information Systems Division (ISD) but the examiner was not able to utilize e-mail to communicate with the board's office.

The board's staff does not have Internet access. Reluctance to utilize the Internet limits the office's access to the state's resources and dissemination of important information to state agencies, which are increasingly Internet based. Payroll processing, disbursement vouchering, purchase requisitioning, and equipment inventory processing are now normally done online at state agencies. At the board's offices, these functions are performed manually on paper.

A large majority of the board's records are paper-based and written in longhand. The board's staff prepares and maintains voluminous reports, paper logs, writing tablets, and folders in order to complete day-to-day activities, tasks that could be more effectively and efficiently done with word processor documents and electronic databases and spreadsheets.

The board's staff was unable to provide a listing of its licensees with accompanying information that is required to be made available by law, without retrieving the information from written records and compiling it by hand. The **Code of Alabama 1975**, Section 34-13-23(e) states, "The executive secretary of the board shall keep a record in which shall be registered the name and business address of every person to whom licenses have been granted in accordance with this chapter, the number and date of the license and the date of each renewal. Upon request to do so, the executive secretary of the board shall supply each person licensed for the practice of embalming and funeral directing with a list of all persons and establishments holding a license under this chapter, then in force, giving the names of the persons, their business addresses and the numbers of their licenses." When the examiner asked for the listing, the associate executive secretary stated that the only way the information could be provided is if he went through all of the licensee files to gather the information. This information could easily have been retrieved from a properly constructed electronic database.

The board's staff could not provide a pamphlet containing information required by law. The **Code of Alabama 1975**, Section 34-13-4 states, "Upon request, the board shall distribute to funeral directors, embalmers and apprentices and such other persons as may be interested therein, in pamphlet form, the provisions of this chapter together with all rules and regulations prescribed, adopted or promulgated pursuant to this chapter, together with a complete and current list of all persons and establishments licensed under this chapter." No such document was available.

The board did provide a list of licensees with the licensee's address for 2006. No other information was provided. This information could easily have been produced on demand from a properly constructed database.

2. Of the 40 licensees responding to our questionnaire, the following appears significant.

- Twenty-nine percent responded that they are not adequately notified of changes or interpretations of the positions, policies, rules, or laws of the Board of Funeral Service
- Fifty-nine percent responded that continuing education is necessary, while thirty-three percent believe it is not necessary, and the remaining eight percent did not have an opinion. (Continuing education is not required of the board's licensees)
- Three establishment licensees responded that the associate executive secretary has requested money (other than normal fees) for performing a board service

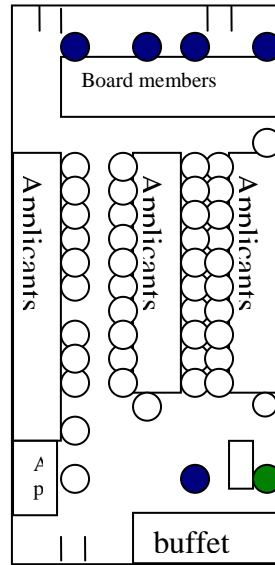
3. The board is not actively monitoring unlicensed funeral homes.

Although unlicensed practice is a recurrent concern among the responses we received from board members and licensees, the board's staff stated that they do not actively monitor unlicensed activity. The examiner performed an Internet search for funeral homes in Alabama and compared the results to a list of licensees provided by the board. Twenty of the funeral homes found in the Internet search were not on the board's licensee list. Realizing that some of the establishments could have changed owners or names, the examiner contacted these establishments by telephone. Seven of the twenty establishments were not on the establishment licensee list provided by the board's executive secretary, and the board could not find any record of the establishments' being licensed.

4. The board did not obtain adequate examining facilities for its January 2007 examination.

The examiner observed the board's January 2007 examination of applicants held in the Capitol Room of the Capitol Inn hotel in Montgomery, AL. The room appeared too small for the examination. Hotel staff informed the examiner that the Capitol Room seats 40 people classroom style and has an area of 1200 square feet. During the examination, forty-four (44) applicants were seated at three long tables, shoulder to shoulder. All board members were also present, as were the executive secretary and the assistant executive secretary. Two of the tables were placed so closely that the backs of chairs at one table touched the backs of the chairs at the other table. Board members and staff left and entered the room during the examination. The room was warm. Outside noises, such as car horns and laundry carts, filtered into the room. As applicants in the center of a table completed the exam, persons to the side of the applicant were disturbed as the applicants left the table.

The following diagram depicts the examination room. The room is not drawn to scale.



* Two parallel vertical lines denote doors; board members are blue and the examiner is green

5. The board's enabling statutes concerning the examination of candidates for licensure are not consistent with the procedures now being used by the board and do not allow the use of modern testing methods.

State statutes require the board to administer and grade examinations for funeral directing. Consequently, computerized testing and other on-demand examinations administered by professional testing services are not alternatives that can be lawfully utilized by the board. A search of the Internet for availability of testing locations for funeral examinations in Alabama revealed that computerized testing services are available in Alabama for the board's examinations. The Pearson Professional Center offers the ICFSEB examination on demand at its testing facilities in Alabama in Birmingham, Decatur, Dothan, Mobile, and Montgomery. The Pearson Testing Center, an international testing service, claims on its Internet website at <http://www.pearsonvue.com/ICFSEB> to provide the funeral service examinations for both the professional examination and the laws, rules, and regulations examination for approximately half the states.

The following table compares statutory requirements with current practice.

<i>Code of Alabama 1975, §</i>	Statutory Requirement	Board Practice
34-13-73	Statute requires the board to prepare and grade funeral director examinations. May be prepared from questions proposed by the American Board of Funeral Service Education	Only the state law portion of the examination is prepared and graded by the board. The board uses funeral director and embalmer tests purchased from the International Conference of Funeral Service Examining Boards (ICFSEB), the provider of National Board Examinations required by the American Board of Funeral Service Education.
34-13-94	Statute lists the required content of the embalmers examination. Statute requires all examination papers to be kept on file with the board for 3 years	The board returns the exam materials to ICFSEB. ICFSEB grades the exams, and returns only the scores to the board. All testing materials are the property of ICFSEB. Although the executive secretary contends that ICFSEB is acting as the board's agent for storage of exam materials, state law requires that an agency's records must be kept at the agency's offices. (<i>Code of Alabama 1975</i> , Section 36-12-2)
34-13-22 34-13-93	Statute requires at least quarterly meetings to examine applicants	Quarterly.

6. Inspection logs do not support the board's compliance with state law that requires at least annual inspection of all licensed establishments.

The examiner's review of the boards' inspection logs for the 2005 and 2006 fiscal years revealed 892 total entries for funeral home inspections. Four hundred twenty-four (424) establishments were recorded as having been inspected twice in the two-year period. Eight establishments having less than two entries were new licensees, one was closed, seven had name changes, and two were possibly checked twice but the record was not sufficiently legible to determine that this was case. Twenty-five establishments were recorded as inspected only once during the 2 year period. Funeral establishments are required to be inspected at least annually by the *Code of Alabama 1975*, Section 34-13-111(b).

7. Records of inspections of funeral establishments create doubt as to the thoroughness of the inspections.

The board is required to complete an inspection of every funeral establishment at least annually. The majority of inspections are recorded as made during the months of August and September. Two persons perform all of the inspections. Our review of the board's inspection log for the period August 1, 2005 through September 1, 2005 indicated that inspections were performed as follows:

(*) Estimates obtained from MapQuest.com

Summary Schedule of Travel Claims, Funeral Home Inspections, Estimated Mileage, Travel Time August 1, 2005 Through September 1, 2005					
Date	Individual Inspector's Travel Claim	Inspection Log	Number of Inspections	Miles Between Cities (*)	Travel Time (*)
8/1/2005 (Mon)	Montgomery - Jackson	Selma – Union Town 15 Cities/towns	31	434	10.65 hr.
8/10/2005 (Wed)	Montgomery – Hamilton - Northport	Birmingham – Hackelburg 12 Cities/towns	19	301	6.98 hr.
8/11/2005 (Thu)		Winfield – Tuscaloosa 10 Cities/towns	19	311	6.80 hr.
8/15/2005 (Mon)	Montgomery – Florence Decatur	Hartselle – Florence 8 Cities/towns	15	335	7.35 hr.
8/16/2005 (Tue)		Florence – Decatur 5 Cities/towns	18	65	1.53 hr.
8/22/2005 (Mon)	Montgomery - Scottsboro	Madison – Scottsboro 7 Cities/towns	17	378.76	7.3 hr.
8/23/2005 (Tues)	Scottsboro - Gadsden	Stevenson – Centre 13 Cities/towns	17	194.63	5.4 hr.
8/24/2005 (Wed)	Gadsden - Arab	Southside – Oneonta 13 Cities/towns	27	309	5.2 hr.
8/25/2005 (Thur)	Arab - Montgomery	Nothing Listed	0	198	3.6 hr.
8/29/2005 (Mon)	Montgomery – Pell City	Pell City – Birmingham 7 Towns/Cities	19	213.76	3.8 hr.
8/30/2005 (Tues)	Pell City - Gardendale	Alabaster – Birmingham 8 Cities/towns	15	104.22	2.3 hr.
8/31/2005 (Wed)	Gardendale - Tarrant	Midfield – Birmingham 5 Cities/Towns	16	77.96	1.9 hr.
9/1/2005 (Thur)	Tarrant - Montgomery	Tuscaloosa – Clanton 4 Cities/towns	9	132.65	2.6 hr.

There does not appear to be sufficient time for the reported volume of inspections shown in the preceding table to have occurred on the days indicated, if thoroughly done. The inspection report form utilized by the inspectors contains the following items:

The top of the inspection report records the following identification items:

- Date of inspection
- Time of arrival
- Establishment name and license number
- Managing funeral director name and license number
- Embalmer name and license number

The remainder of the inspection report records the following inspection items:

- Number of licensees
- Number of apprentices
- Proper display of license
- Number of complete services per year
- Pricing requirements: statements of charges given to families, method of quoting prices, and price card displayed in casket
- Display room requirements: number of caskets and appearance
- Restroom requirements: number, appearance, type of towels, lighting, adequate plumbing and fixtures, and floor type
- Preparation room requirements: number of embalming tables, appearance, proper drainage, approved instruments, adequate ventilation, adequate waste container, soiled linen container, drainage, type sewage, type floor, and embalming records
- Premise construction type and condition
- Number of transport vehicles and appearance

8. The board failed to provide quarterly SMART Performance Report information required by the Department of Finance for the 2006 fiscal year.

The board provided the first quarter performance information for the 2006 fiscal year but did not provide the remaining three quarters of information to the SMART budget office. As of April 26, 2007, performance information continued not to be reported. Further information about the board's SMART Budget effort can be found in the SMART BUDGETING section of this report.

9. The board does not require the Social Security number of applicants for establishment license as a condition of licensure, as required by law (*Code of Alabama 1975*, Section 30-3-194).

Section 30-3-194 requires that, "(a) Any agency charged with the administration of any law concerning the issuance or renewal of a license, certificate, permit, or other authorization to drive a private or commercial motor vehicle or to engage in a profession, occupation, or recreational, sporting, or commercial activity shall require all applicants for issuance or renewal of the license, certificate, permit, or other authorization to provide

the applicant's Social Security number to the agency, which agency shall record the Social Security number on the application and related records maintained by the agency.”

The Attorney General, in his opinion 2004-022, stated that such an agency must require the Social Security number of the individual or individuals in a corporation, partnership, or limited liability corporation required to make application for license for that entity.

10. A survey by the Funeral Consumers Alliance found violation of federal funeral regulations in nearly all local [Montgomery] funeral establishments surveyed.

Minutes of the board’s meeting of October 27, 2006 show that Dr. Carolyn Pevey, an Assistant Professor of Sociology at Auburn University Montgomery representing the Funeral Consumers Alliance, presented to the board a report of a survey the group had made of local funeral establishments. The purpose of the survey was to determine compliance by funeral establishments with the Federal Trade Commission’s “Funeral Rule”. The Funeral Rule consists of regulations governing pricing and availability of funeral goods and services. Dr. Pevey reported that nearly all establishments contacted had some violation of the rule, some with major infractions.

On its Internet website, the Funeral Consumers Alliance presents itself as a “federation of nonprofit consumer information societies dedicated to a consumer’s right to a meaningful, dignified, affordable funeral” that has operated since 1963. The organization is national in scope and is headquartered in Burlington Vermont. It lists affiliates in all but six states (Alabama, Kansas, Mississippi, Nebraska, North Dakota, and Wyoming) and claims that an affiliate is “coming soon” in Alabama.

After Dr. Pevey’s presentation, Dr. Pevey was informed by the board that the board’s authority of enforcement ended at the state level and did not extend to federal laws or regulation. The board stated that it would inform the state’s establishments that the surveys would be continuing and would encourage the establishments to review their policies to ensure compliance with the FTC regulations.

Additional information about the FTC regulations can be found in the REGULATION IN CONJUNCTION WITH OTHER ENTITIES section of this report.

11. The board has not yet adopted a rule regarding an identification system for funeral establishments taking possession of a dead human body.

Act 2006-608 provides in Section 1(a) that “Each funeral establishment taking possession of a dead human body shall maintain an identification system approved by the Alabama Board of Funeral Service. The identification system may include any dignified method, including, but not limited to, an arm band or a wrist band, that will ensure the ability to identify the body from the time of taking possession of the body until the body is transferred to another entity or until final disposition.

The board discussed the issue in its meeting of April 26, 2006 as House Bill 428, which became law as Act 2006-608 and is codified as the *Code of Alabama 1975*, Section 22-19-5. A board member moved that the board approve identification methods that allow non-detachable ankle bracelets. The motion was seconded, but minutes of the meeting do not record a vote on the motion.

Since the board's action on this issue will result in a regulation of the board arising from law and which applies to the public, the action must be adopted as an administrative rule in accordance with the rulemaking provisions of the Administrative Procedure Act.

12. The board's enabling statutes require its applicants for licensure to be United States citizens, a condition that may be unconstitutional.

The *Code of Alabama 1975*, Section 34-13-72 states, "An applicant for a funeral director's license is entitled to an examination if he: (1) Is a citizen of the United States; ..."

The *Code of Alabama 1975*, Section 34-13-92 states, "In order to qualify for a license as an embalmer, the applicant shall: (1) Be a citizen of the United States;..."

The United States Supreme Court has ruled that it is unconstitutional to refuse professional licensing based solely upon lack of United States citizenship. See Virginia v Friedman, 487 U.S.59 (1988), Examining Board v Flores de Otero, 428 U.S.572 (1976), In Re Griffiths, 413 U.S.717 (1973). Opinions of the Attorney General No. 83-010 and 95-092 also address this issue.

13. When requested by the examiner, the Ethics Commission was unable to produce filed statements of economic interest for members of the board (past and present), and for the executive secretary and the associate executive secretary.

Statements of Economic Interest are required by law to be filed annually with the Alabama Ethics Commission. The examiner contacted the Ethics Commission by telephone and asked to review the Statements of Economic Interest for the board members and the executive secretary and associate executive secretary. The examiner provided the names of all members who should have filed during the review period and the name of the executive secretary and the assistant executive secretary. The examiner was informed that none of the statements could be located.

14. The board did not post its membership information to the Secretary of State's Internet website, as required by law.

Act 2006-630, effective July 1, 2006 and codified as the *Code of Alabama 1975*, Section 36-14-17 requires each board and commission to post information about its members to an Internet website maintained by the Secretary of State. The board had not done so.

15. An I-9 form was not on file for the board's recently hired employee.

Completion of a form I-9 is a federal immigration law requirement. The form documents an employer's determination that a newly-hired employee is eligible for employment under federal immigration law. This determination is required by the Federal Immigration Reform and Control Act of 1986, as amended, and is required whether or not the employer believes the employee is a United State citizen. Employees hired by all state agencies are subject to the requirement. It is the responsibility of each employing agency to complete the form.

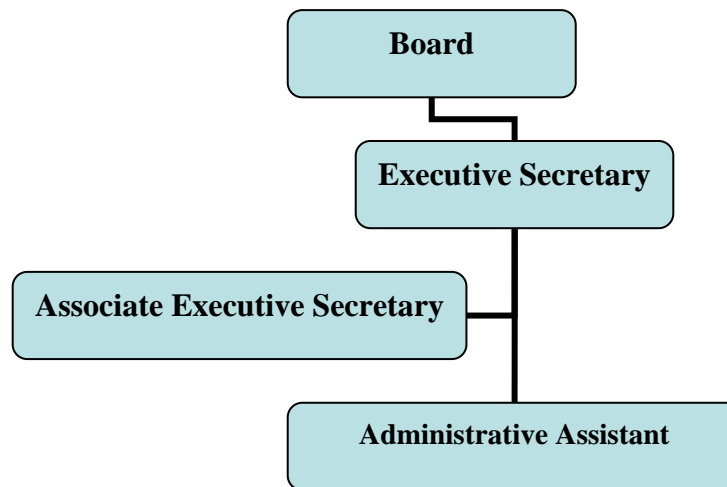
STATUS OF PRIOR FINDINGS

In the most recent prior examination, we found that the board failed to comply with Alabama's Sunshine Law by notifying the public of board meetings. Review of the board's records and subsequent questioning of the board's executive secretary revealed that public notification of board meetings had not been accomplished for an extended length of time. The executive director stated he had faxed notice of the meetings to a local newspaper for publication, but the notices were never published. The executive director failed to take the steps necessary to ensure that the notices were published.

The Alabama Sunshine Law (*Code of Alabama 1975*, Section 13A-14-2) requires that reasonable notice be given to the public of those meetings that must be open to the public; the public must be given a reasonable opportunity to be aware of the place where the notice will be posted; and the time, date, and place of the meeting must be available to the public upon reasonable inquiry, and when special circumstances arise or when a meeting is called for truly emergency purposes, the agency holding the meeting should so declare and should give such notice as is reasonable under the circumstances, unless the giving of such notice is impractical or impossible. *Slawson v. Alabama Forestry Com'n*, 631 So.2d 953 (Ala.1994).

Status: The board began to post notice of its meetings on the Secretary of State's Internet website on January 28, 2006, as required by the state's Open Meetings Act, which replaced Alabama's Sunshine Law effective October 1, 2005. Although the board set its meetings two months in advance and notified its licensees, the board did not post public notice of the meetings on the Secretary of State's Internet website until seven to eight days prior to the meeting date. The Open Meetings Act requires posting "as soon as practicable", which means as soon as feasible after the meeting date is known.

ORGANIZATION



PERSONNEL

The *Code of Alabama 1975*, Section 34-13-23(c) provides that, “The board may employ an executive secretary and associate executive secretary who shall each receive and be paid an annual salary to be fixed by the board, but not to exceed the salary level established and paid to cabinet officers in the state government.” The *Code of Alabama 1975*, Section 34-13-23(j) provides that, “The board may employ clerical assistants and employees or other help as may be necessary to carry out the provisions of this chapter, and the terms and conditions of employment shall be determined by the board.”

The board employs three (3) persons, an executive secretary, an associate executive secretary, and an administrative assistant. All are employed outside the state’s merit system. The administrative assistant is employed under terms and conditions set by the board and is working without a contract. The board allows the employees to earn annual leave and accumulate annual leave in the same manner as merit system employees. At retirement, an employee can be paid for unused annual leave. Sick leave is also earned and accumulated in the same manner as state employees; however, accumulated sick leave is not paid upon retirement of the employee.

Jeffrey H. Long, Assistant Attorney General, provides legal services for the board.

Merit System Classification	Number of Employees	Race	Gender
Non-merit system-Executive Secretary	1	White	Male
Non-merit system Associate Executive Secretary	1	Black	Male
Non-merit system Administrative Assistant	1	Black	Female

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 1230

Number of Persons per Licensee in Alabama and Surrounding States

as of September 30, 2006

	Population (Estimate)	Number of Licensees	Persons Per Licensee
Alabama	4,599,030	3,689	1,247
Florida	18,089,888	6,836	2,646
Georgia	9,363,941	4,911	1,907
Mississippi	2,910,540	1,917	1,518
Tennessee	6,038,803	3,995	1,512

Operating Disbursements per Licensee (2006 fiscal year) - \$80

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes.

Inspections

The enabling statutes require the board to conduct at least an annual inspection of all establishments. The executive secretary and the associate executive secretary conduct all inspections. See the SIGNIFICANT ITEMS section of this report for more information concerning inspections.

Complaints

The board accepts only written complaints, unless in the discretion of the board representative receiving the complaint, there is sufficient information supplied by an oral complaint to warrant further investigation. The majority of complaints refer to overpayments to a funeral establishment which are not reimbursed to the family of the deceased. The board keeps a record of written complaints submitted by complainants. If a complaint indicates that a licensee has violated the law, the complaint is reviewed by board staff and legal counsel to decide if an administrative hearing is necessary. Administrative hearings are conducted in accordance with the Administrative Procedure Act. Depending on the allegations, the time of resolution for complaints varied between five days and five months.

The number of complaints received and resolved for the past four years are:

<u>Fiscal Year</u>	<u>Number of Complaints</u>	<u>Complaints Resolved</u>	<u>Average Length of Time to Resolve Closed Complaints</u>
2003-04	3	3	No information
2004-05	6	6	4 months
2005-06	7	5	1 day (A)
2006-07	0	0	N/A

(A) – Two complaints remain open

Board Rule 395-X-4-.03 provides the procedures for documentation, receipt, and investigation of complaints relating to board licensees and illegal practices.

Complaint Process

Investigations Personnel	Executive Secretary (administrative processing) Legal Counsel (statutory considerations) Board Member - reviews evidence after completion of the investigation (district specific) Associate Executive Secretary
Initial Documentation	The board will only accept formal written complaints unless in the discretion of the board representative receiving the complaint, there is sufficient information supplied by an oral complaint to warrant further investigation.

Disposition Without Hearing	If the investigative committee (legal counsel, board member, executive director) determines no need for further action, due to <i>No probable cause</i> or a <i>Lack of evidence</i> , the complaint is dismissed. If further action is necessary, and the complaint can best be resolved by communication, a letter of compliance requirements is sent to the offending person.
Anonymous Complaints	The board normally does not accept anonymous complaints. No anonymous complaints were recorded as accepted during the last four years.
Investigating Board Member's Status During Hearing	Any board member involved in the investigation process is required to recuse himself from the hearing process in any capacity other than as a witness.

SMART BUDGETING

Acts of Alabama, 2004-50 (HJR89) states, "That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals in performance based budget language and form. This request is applicable for proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter."

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance. Goals are long-term, multi-year targets, which are to be achieved through accomplishment of objectives, which are single-year targets. Both goals and objectives should be designed with an end point so that progress toward their achievement can be measured and reported.

The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The Operations Plan describes what will be done with the funds provided through appropriations. The agency's goals are presented in the Operations Plan. The performance report only presents information on achievement of an agency's annual objectives, and is the only SMART Budgeting report that presents performance information. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals. Agencies' Operations Plans and Quarterly Performance Reports are

available on the state's SMART Budgeting Internet website at <http://www.smartbudgeting.alabama.gov>. The board's Operations Plans for the 2005-06 and 2006-07 fiscal years and the board's Performance Report for the 2005-06 fiscal year are presented in the appendices of this report.

Among agencies that were not accustomed to reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no end points and with no directly related objectives. Some goals and objectives were too abstract to be measurable, and progress toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

In these respects, the Board of Funeral Service was no exception. Some goals were open ended and not accompanied by directly related objectives. Some goals and objectives were abstract, and progress toward their achievement could therefore not be meaningfully measured and reported. The board's design of goals and objectives for the 2007 fiscal year improved, but remain inadequate to present the board's performance.

The board submitted a 2006 Operations Plan and 1st quarter data for the SMART Quarterly Performance Report. However, the 2nd, 3rd, and 4th quarter data were not supplied for the performance report. Data was also not supplied for the 1st quarter of the 2007 fiscal year. The board's 2006 and 2008 SMART Operations Plan and its 2007 SMART Performance Report can be found in the appendices of this report.

The board's performance goals and objectives for the 2006 and 2007 fiscal years and the examiner's comments are presented in the following table.

2006	
2006 GOALS	COMMENTS
1. To ensure that consumers are dealt with licensed qualified professionals	Not measurable. Not accompanied by a directly related objective. Consequently, progress toward achievement could not be presented in the board's Performance Report.
2. To ensure that all [100%] funeral establishments maintain adequate standards	The goal is measurable and has a long-term target. Compliance with standards can be checked and reported through the agency's inspection program. However since there was no accompanying objective, progress toward achievement of the goal could not be presented on the board's Performance Report.

3. To minimize illegal practices within the profession.	This goal is measurable but has no long-term measurable target from which to determine when the goal is reached. A reduction in illegal practices should be indicated by a drop in complaints and inspection discrepancies, both of which can be measured. Objective #1 is directly related to this goal. Therefore progress toward achievement of this goal could have been presented on the Performance Report.
4. To enhance overall standards through laws and regulations	This goal is too abstract to be meaningfully measured. The goal has no long-term measurable target from which to determine when the goal is reached. Also, there was no accompanying annual objective to show progress. Consequently, progress toward achievement of this goal could not be reported on the Performance Report.
2006 OBJECTIVES	COMMENTS
1. Reduce the time required to process applications through improved office equipment.	The objective is incomplete. No specific target time was stated. No data for the objective was presented in the performance report.
2. To reduce the number of violations found during annual inspections	The objective is incomplete. No specific target number was stated. No data for the objective was presented in the performance report.

2007

2007 GOALS	COMMENTS
G1: To conduct inspections of all funeral establishments to ensure that they comply with expected standards.	The goal is a requirement of law (all funeral establishments are required to be inspected at least annually) and is a workload statement rather than a performance goal. There is no directly related objective. Consequently, performance for this goal will not appear on the board's performance report.
G2: To conduct investigations of suspected violations of laws and regulations.	The goal is a requirement of law and is actually a workload statement rather than a performance goal. The goal has no long-term target from which to determine whether the goal is met. Also, since there is no directly related objective, performance for this goal will not appear on the board's performance report.

G3: To administer examinations for license applicants.	The goal is a requirement of law and is actually a workload statement rather than a performance goal. The goal has no long-term target from which to determine if the goal is met. Also, since there is no directly related objective, performance for this goal will not appear on the board's performance report.
G4: To promote ethics and integrity in working with consumers.	The goal is too abstract to be measured. There is no long-term target from which to determine if the goal is met. Since there is no directly related objective, performance for this goal will not appear on the board's performance report.
2007 OBJECTIVES	
Reduce time to process applications	There is no target time stated from which to determine whether the time is reduced. The performance report will not show whether a reduction of time occurred.
Reduce the number of inspection violations through adequate enforcement.	There is no target number stated from which to determine whether the number of violations is reduced. The performance report will not show whether progress occurred.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Federal Trade Commission (FTC) - Both the Alabama Board of Funeral Service and the FTC require pricing disclosures for funeral services and merchandise associated with chosen funeral services (package pricing). The FTC requires disclosure of not only packaged services, but also of individual items associated with those services and the availability of unbundled services and merchandise. Representatives from FTC engage in undercover shopping to discover violations of federal funeral pricing disclosure regulations. The federal regulations prohibit misrepresentations about legal, crematory, and cemetery requirements pertaining to disposition of human remains. Federal regulations also prohibit certain unfair practices, such as embalming for a fee without prior permission or requiring consumers to purchase caskets when they intend to cremate the remains or conditioning the purchase of any funeral goods and services on the purchase of any other funeral goods and services.

Although the federal regulations apply to all funeral establishments, there is an exemption for individual states, if the state's laws offer equal or greater protection and the state effectively enforces its laws. Federal regulations in 16 CFR 453.9 State exemptions provides that, "If, upon application to the Commission [FTC] by an appropriate state agency, the Commission determines that: (a) There is a state requirement in effect which applies to any transaction to which this rule applies; and (b) That state requirement affords an overall level of protection to consumers which is as

great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.”

Federal Occupational Safety and Health Administration (OSHA) - OSHA regulates funeral establishments, particularly as to safety issues surrounding the presence of blood borne pathogens and formaldehyde.

Alabama Department of Insurance - The Department of Insurance regulates the pre-need sales of funeral and cemetery services by licensing pre-need entities as required by Alabama’s “Pre-Need Funeral and Cemetery Act of 2002. The Department of Insurance assumes operations (receivership) of insolvent funeral establishments and cemeteries when necessary. Receivership means that all of the assets of an entity are placed under the stewardship of the Department of Insurance chief receiver, whose official actions are supervised by the court. Since the effective date of the act, the Department of Insurance has placed fifteen funeral establishments into receivership. None have yet been sold or otherwise disposed of. According to the Pre-need Division of the Department of Insurance, the Board of Funeral Service provides helpful information concerning pre-need activity.

FINANCIAL INFORMATION

The board receives funds from application fees, original licensure fees, renewal fees, inspection fees, and penalties, which are deposited and disbursed from a special revenue fund in the State Treasury.

Schedule of Fees

The *Code of Alabama 1975*, Sections 34-13-51, 34-13-53, 34-13-55, 34-13-70, 34-13-74, 34-13-90, 34-13-111, 34-13-113, 34-13-114, 34-13-130, and 34-13-131 authorize the board to set fees. The following fees have been set by administrative rule.

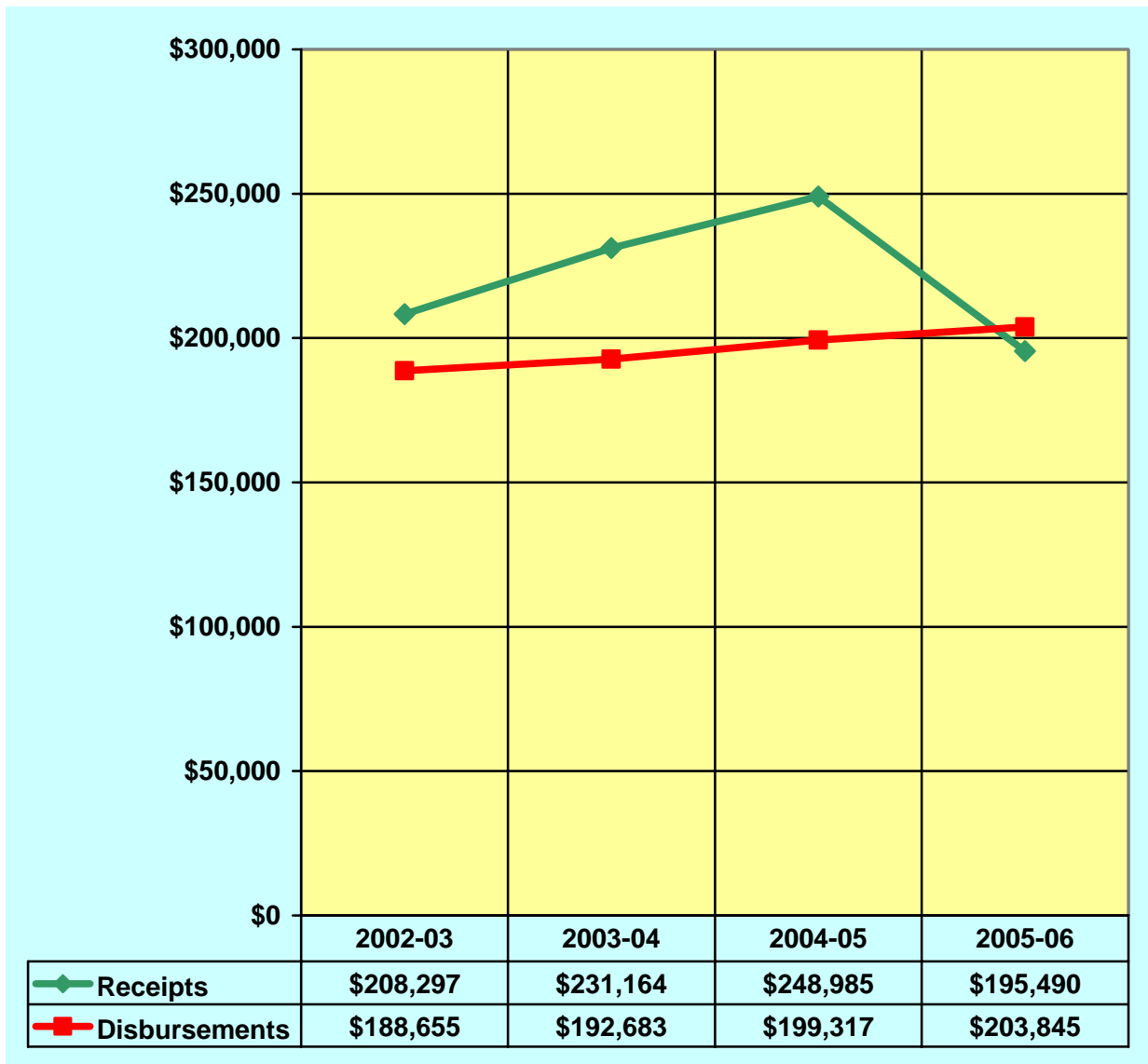
Type of License	Statutory Authority <i>Administrative Rule, or Code of Alabama Section</i>	Amount
Original License:		
Funeral Director, Practical Embalmer, and Embalmer	Rule 395-X-2-.04, Section 34-13-70 and 90	\$ 50.00
Apprentice	Rule 395-X-2-.04, Section 34-13-130	20.00
Establishment	Rule 395-X-2-.04, Section 34-13-113	200.00
Examination:		
Funeral Director	Rule 395-X-2-.01, Section 34-13-70 and 90	100.00
Embalmer		100.00

Type of License	Statutory Authority <i>Administrative Rule, or Code of Alabama Section</i>	Amount
License Renewal:		
Funeral Director, Practical Embalmer, and Embalmer	Rule 395-X-2-.03, Section 34-13-53	50.00
Apprentice	Rule 395-X-2-.03, Section 34-13-131	20.00
Establishment	Rule 395-X-2-.03, Section 34-13-53	100.00
Establishment Inspection Fees:		
Original Inspection Fee	Rule 395-X-4-.01, Section 34-13-111	35.00
Re-inspection Fee		75.00
Annual Inspection Fee	Rule 395-X-4-.02, Section 34-13-111	35.00
Special:		
Reciprocal Licensure	Section 34-13-51	100.00
Special Operating Permit	Section 34-13-74	25.00

Schedule of Receipts, Disbursements, and Balances

	2005-06	2004-05	2003-04	2002-03
<u>Receipts</u>				
License Fees (*)	\$ 195,490.00	\$ 248,985.00	\$ 231,164.21	\$ 208,297.00
<u>Disbursements</u>				
Personnel Costs	\$ 124,585.13	\$ 117,588.98	\$ 118,238.98	\$ 116,795.34
Employee Benefits	41,004.19	38,574.53	33,098.84	31,028.49
Travel In-State	4,693.34	6,124.61	5,107.58	5,895.63
Repairs and Maintenance	247.50	112.50	112.50	
Rentals and Leases	12,070.54	14,597.16	12,437.75	14,451.91
Utilities and Communications	5,912.50	5,596.33	4,804.58	7,244.87
Professional Services	11,257.77	11,936.11	10,439.99	8,488.18
Supplies, Materials and Operating Expenses	4,073.62	4,786.41	4,814.23	4,750.74
Other Equipment Purchased	-	-	3,628.34	-
Total	203,844.59	199,316.63	192,682.79	188,655.16
Excess (Deficiency) of Receipts Over Disbursements	(8,354.59)	49,668.37	38,481.42	19,641.84
Cash Balance at Beginning of the Year	208,660.98	158,992.61	120,511.19	100,869.35
Cash Balance at End of Year	200,306.39	208,660.98	158,992.61	120,511.19
Reserved for Year-End Obligations	(7,440.00)	(2,860.00)	(7,380.00)	(3,950.00)
Unreserved Cash Balance	\$ 192,866.39	\$ 205,800.98	\$ 151,612.61	\$ 116,561.19
(*) Decline in receipts in 2006 due to deposit of year-end renewal fees in the 2007 fiscal year				

Operating Receipts Vs Operating Disbursements (Chart)



QUESTIONNAIRES

Board Member Questionnaire

We surveyed all seven board members. Of those, four responded.

1. What are the most significant issues currently facing the Alabama Board of Funeral Service and how is the board addressing these issues?

Respondent 1: “We need more Personnel to investigate those firms that are operating without proper licensed personnel, that is directing funerals without Funeral Director’s License, embalming bodies with personnel and having persons with license signing they have embalmed the body.”

Respondent 2: “Expenses that are increasing yearly due to increases in cost. The board tries to maintain budget with the monies raised through license fees only.”

Respondent 3: “1. The public needs a website that displays the information the boards holds. 2. More inspectors to insure that families deal only with licensed individuals. 3. Need funeral director logs to assure the board that every funeral has a licensed funeral director. Establishments aiding and abetting unlicensed embalmers.”

Respondent 4: “Enforcement of current regulation concerning solicitation. The board does not address the problem.”

2. What changes to the Alabama Board of Funeral Service laws are needed?

Respondent 1: “We need a law that requires continued education for all licensed personnel and a law that states that a person should have 20 hours of Mortuary College before they can take the funeral director’s test for license. A law that requires a log to be kept similar to the log that is kept by licensed embalmers, stating the name of the deceased, the date and time of the funeral, the place service was held and the name and signature of the licensed funeral director that directed the funeral. There should be no Grandfather clause in the law, and if so we would be against it.

Respondent 2: “Removal of a law that the board must give time credit towards apprenticeship before 1975 and after 1976 the board might give time credited. If this was change it would be fair for everyone equally.”

Respondent 3: “License fees need to be increased. Testing needs to be done by an independent agency and not the board. Like insurance, cosmetology and nursing. No grandfather clauses should ever be brought before the board.”

Respondent 4: “Transport of remains across state (GA, FL) line.”

3. Is the Alabama Board of Funeral Service adequately funded?

1 Yes 1 No 2 Unknown

Respondent 1: “We have not seen the books.”

Respondent 3: “probably not”

4. Is the Alabama Board of Funeral Service adequately staffed?

1 Yes 3 No

Respondent 1: “We need more policing of the laws that on the books.”

Respondent 3: “Need more inspection capability”

5. What is the purpose of your fiscal year end balance of unobligated funds?

Respondent 1: “We are not sure of what funds are unobligated.”

Respondent 2: “The board generates the funds needed through license fees. If the revenue exceeds expenses the board keeps to help for future and fees are not increased.”

Respondent 3: “To be held for a rainy day when expenses exceed revenues. In the balance gets too big increase services (inspectors)”

Respondent 4 did not respond to the question.

Licensee Questionnaires

APPRENTICE LICENSEE QUESTIONNAIRE

We surveyed one hundred apprentice licensees. Of those, twenty-three responded. Their responses are recorded as follows:

1. Do you think regulation of your profession by the Alabama Board of Funeral Service is necessary to protect public welfare?

22 Yes _____ No 1 Unknown ___No Opinion

2. Do you think any of the Alabama Board of Funeral Service laws, rules, and policies are an unnecessary restriction on the practice of your profession?

6 Yes 17 No _____Unknown ___No Opinion

Respondent 12: “Presently, a new funeral home must wait 2 yrs to put the owners name on it if the owner is not a mortician or funeral director. Since a new funeral home must have a mortician and funeral director to get a license, the owner should be able to put his name on it immediately.”

6. Do you think any of the Alabama Board of Funeral Service requirements are irrelevant to the competent practice of your profession?

3 Yes 19 No 1 Unknown ___No Opinion

7. Are you adequately informed by the Alabama Board of Funeral Service of changes to and interpretations of Board of Funeral Service positions, policies, rules and laws?

17 Yes 4 No 2 Unknown

8. Has the Alabama Board of Funeral Service performed your licensing and renewal in a timely manner?

18 Yes 3 No 2 No Opinion

9. Do you consider mandatory continuing education necessary for competent practice?

17 Yes 4 No 1 Unknown 1 No Opinion

10. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Board of Funeral Service doing to address the issue(s)?

Respondent 2: "The manner in which the Commission of Insurance interprets and enforces the pre-need law."

Respondent 3: "The issue pertaining to men and women working funerals and embalming bodies with no license. I wish that the board could examine funeral homes better."

Respondent 6: "Unlicensed funeral homes."

Respondent 7: "Creutzfeldt-Jakob Disease. How do you properly embalm, disinfect a body? AB of FS needs to communicate about this."

Respondent 9: "I feel the grandfathering of embalmers are the most significant issue. I feel that those who have 20 years or more should be allowed a one time chance to be licensed. The board to me, they are doing nothing about it."

Respondent 13: "Only have one license to practice in AL."

Respondent 14: "Non-licensed people practicing funeral directing and embalming. There are several people in our area practicing with no regard to the law. They know they won't get caught. It makes it difficult for license people to get fair pay because the owners hire non-license people to do the same work with no threat of penalty. Also, funeral homes in Georgia, Florida, and Mississippi and Tennessee come and go as they please with no respect for our embalming laws."

Respondent 15: "The diseases that have killed several world wide are soon coming to Alabama, such as the bird flu. We need to be ready."

Respondent 16: "Regulations that protect the public and yes the ABFS is doing that."

Respondent 17: "My concern is are the funeral homes being inspected on a consistent basis."

Respondent 21: "Solicitation by funeral homes; especially XXX Funeral Home-Birmingham."

Respondent 22: "Making it more difficult. The test is difficult to take at least give study Funeral Directors License (FDL) question for test \$125.00 is too much to lose on a test that will be too hard to pass."

11. Do you think the Alabama Board of Funeral Service and its staff are satisfactorily performing their duties?

19 Yes 1 No 3 Unknown ___ No Opinion

Respondent 9: The reason they are short staffed, some get by and other don't.

12. Has any member of the Alabama Board of Funeral Service or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a service for you?

___ Yes 23 No

LICENSEE QUESTIONNAIRE

We surveyed one hundred funeral director, practical embalmer, and embalmer licensees. Of those, forty responded.

1. Do you think regulation of your profession by the Alabama Board of Funeral Service is necessary to protect public welfare?

39 Yes 1 No _____ Unknown ____ No Opinion

2. Do you think any of the Alabama Board of Funeral Service laws, rules, and policies are an unnecessary restriction on the practice of your profession?

3 Yes 36 No _____ Unknown 1 No Opinion

Respondent 16: "I think the requirement to display 8 caskets is out dated with modern technology of computers and cuts and corners."

Respondent 28: "If we are a reciprocating state, why are licensed funeral directors from other reciprocating states required to retake the FD test as well as the law test?"

3. Do you think any of the Alabama Board of Funeral Service requirements are irrelevant to the competent practice of your profession?

5 Yes 35 No _____ Unknown ____ No Opinion

Respondent 2: "Not to my knowledge"

4. Are you adequately informed by the Alabama Board of Funeral Service of changes to and interpretations of Board of Funeral Service positions, policies, rules and laws?

25 Yes 13 No 2 Unknown

Respondent 2: "As far as I know."

Respondent 7: "No communication, other than renewal application."

Respondent 19: "Newsletters come to the funeral home, but I think each person should get a quarterly newsletter also."

5. Has the Alabama Board of Funeral Service performed your licensing and renewal in a timely manner?

37 Yes 2 No 1 No Opinion

6. Do you consider mandatory continuing education necessary for competent practice?

20 Yes

17 No

 Unknown

3 No Opinion

Respondent 2: "CEU's don't "do not" make someone a professional (morales & ethics do!)

Respondent 11: "Just a way for some one to make more \$"

Respondent 15: "Absolutely Not!"

Respondent 28: "a waste of time & money!"

7. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Board of Funeral Service doing to address the issue(s)?

Respondent 2: "Out of control (price abuse) cemeteries. They are not held accountable. They charge whatever they want and the families has no recourse against them. Some funeral homes are the same way. I hope they are addressing this issue."

Respondent 4: "No longer a resident in the State of Alabama"

Respondent 5: "There needs to be a staff increase to inspect funeral homes more often. I also believe we need continuing education. The State of Alabama needs to raise the qualifications for embalmers, funeral directors and funeral home establishments. For once we need to be the leader in our profession. We should raise the requirements in our practice and never lower our standards to meet a few people that cannot pass the former educational requirements."

Respondent 7: "Board of Funeral Service has little to no ability to police the profession, particularly in the area of unlicensed personel. I'm sure that funeral homes use unlicensed personell and the board has the responsibility of making sure that does not happen."

Respondent 8: "Preneed"

Respondent 9: "The low pay. I have no knowledge that the board has ever addressed that issue. Remember, the embalmer has to have a college degree."

Respondent 10: "There should be formal education requirements for a funeral director's license. The board supports this, but there is opposition by specific legislators."

Respondent 15: "Preneed laws need to be enforced. We need stricter penalties for those found in nocompliance. It is a well known fact that a lot of non licensed people are embalming and licensed embalmers are signing off on it."

Respondent 16: "Funeral service, like everything else, is changing. I think funeral service practitioner have to stay up with trend changes, disease, and the wishes of the public. Education is the only way to accomplish this and should be required."

Respondent 17: "Lack of enforcing the rules. Addressing nothing to my knowledge."

Respondent 19: "One significant issue to me is this. A person who is qualified to service families, direct funerals or embalm, should be properly authorized to do so. If they have worked for a establishment for ten (10) or no less than (5) yrs."

Respondent 22: "Lack of clear interpretation of pre-need laws. To many funeral homes in Alabama operating without the proper COA pre-need license."

Respondent 23: "Cremation rate"

Respondent 24: “Controlling operation (ownership) licenses of funeral homes thru not requiring both F.D. and embalmer’s qualified education.”

Respondent 31: “Funeral homes not properly trusting preneed funds & they are mishandling the funds. The Alabama Board of Funeral Service is handling it properly by taking control of the funeral homes that don’t.” [*Examiner note: DOI is taking the FH’s into receivership.*]

Respondent 32: “preneed laws”

Respondent 33: “I consider issues considered by the Board as being sufficient for now.”

Respondent 37: “Making sure the doctors sign off on the death cert. in a timely manner. Unknown what is being done.”

Respondent 40: “The casket store providing goods and services-limousine drivers act as funeral directors on a licensed funeral directors staff. The family served – consider employees of the casket store the authority in charge which causes conflict. The roll of casket stores should be carefully considered. The licensed people from funeral homes are viewed as enemies of the grieving family – which places them in very awkward situations. They now call themselves funeral planners- general price list are manipulated – but funeral homes are not given their price list for comparison.”

8. Do you think the Alabama Board of Funeral Service and its staff are satisfactorily performing their duties?

28 Yes

3 No

7 Unknown

2 No Opinion

Respondent 2: “As far as I know.”

Respondent 9: “I have never seen a board member come in inspect this establishment and or observe the operation.”

Respondent 11: “Will not help F/H that have had problem in the past with attys suing F/H over ins. matters”

Respondent 15: “Too many non licensed people are embalming. The AL Board needs to police this in a better way.”

Respondent 17: “Licensing renewal not done in a timely manner.”

9. Has any member of the Alabama Board of Funeral Service or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a service for you?

_____ Yes

40 No

Respondent 2: “Never”

Respondent 16: “Mr. XXXXXXXX is concerned about the Alabama Funeral Service Laws and attempts, with the limited resources he has, to enforce those law. He and his staff seem to be couteous, competent and honest.”

Respondent 30: “Always been very professional to me.”

ESTABLISHMENT LICENSEE QUESTIONNAIRE

We surveyed one hundred establishment licensees. Of those, forty-three responded.

1. Do you think regulation of your profession by the Alabama Board of Funeral Service is necessary to protect public welfare?

40 Yes 3 No _____ Unknown ___ No Opinion

2. Do you think any of the Alabama Board of Funeral Service's laws, rules, and policies are an unnecessary restriction on funeral establishment ownership?

10 Yes 32 No _____ Unknown 1 No Opinion

Respondent 8: "We must do something about the small amount of licensed people in our business. Not that I want to but we may have to grandfather funeral directors not embalmers."

Respondent 20: "The form we have to sign and put the time of embalming on is unnecessary. Having to display 8 full size caskets is also."

Respondent 23: "10 casket rule display is to much for small towns."

Respondent 40: "They need more tighter regulations for the number of unlicensed individuals who are practicing at this time."

3. Do you think any of the Alabama Board of Funeral Service's requirements are irrelevant to the ownership of a funeral establishment operation?

12 Yes 28 No 1 Unknown 2 No Opinion

Respondent 26: "caskets"

Respondent 38: "With some exceptions"

Respondent 43: "I think there needs to be a 2 year attendance of funeral directors also. There are too many individuals getting funeral directors license who have no college education. This is suppose to be a profession."

4. Are you adequately informed by the Alabama Board of Funeral Service of changes to and interpretations of Alabama Board of Funeral Service's positions, policies, rules and laws?

29 Yes 14 No _____ Unknown ___ No Opinion

Respondent 6: "I have never received information of positions, policies, or rule interpretations the board was asked to rule on."

Respondent 11: "I would like to have a copy of the polices, rules, and laws."

Respondent 26: "preneed"

Respondent 43: "XXXXXXX XXXXXXXX and XXXXXXXX XXXXXXXX will not send out requested meeting minutes as requested even if you are a licensee. Licensed funeral

directors and embalmers who are employed part time does not receive letters from the board unless they are asking for the yearly application fee.”

5. Has the Alabama Board of Funeral Service performed your licensing and renewal in a timely manner?

39 Yes 4 No ___ No Opinion

Respondent 43: “XXXXXXX Funeral Home, Butler, Alabama was not inspected. Only the XXXX, Alabama Chapel. I guess Mr. XXXXXX just assumed he only needed to visit one funeral home.”

6. When did the Board of Funeral Service perform your last inspection?

(Questionnaire mailed January 2007)

Date of Inspection: Oct/2005 1
 Date of Inspection: Nov/2005 1
 Date of Inspection: Feb/2006 2
 Date of Inspection: April/2006 3
 Date of Inspection: May/2006 2
 Date of Inspection: June/2006 1
 Date of Inspection: July/2006 1
 Date of Inspection: Aug/2006 4
 Date of Inspection: Sep/2006 14
 Date of Inspection: Oct/2006 4
 Date of Inspection: Nov/2006 1
 Date of Inspection: Dec/2006 2
 Date of Inspection: 2006 2
 Unknown Date of Inspection: ___ 5

Respondent 43: “Suppose to happen in September. Only inspected one chapel.”

7. What do you think is the most significant issue(s) related to funeral establishment ownership or operation in Alabama and what is the Alabama Board of Funeral Service doing to address the issue(s)?

Respondent 2: “Shortage of licensed funeral directors and embalmers. And the issue of unlicensed workers performing embalming continually. The board is not doing enough to address the unlicensed embalmers.”

Respondent 3: “Desegregate the funeral industry in Alabama.”

Respondent 6: “Making sure all persons engaged in embalming, arranging funeral services, and conducting funeral services are properly licensed. I know their manpower will not allow this to happen, in cases they suspect they should do unannounced visits.”

Respondent 7: “Prep rooms need to be clean”

Respondent 8: “Not enough lic. funeral directors”

Respondent 9: “1) Casket display requirements 2) unlicensed staff 3) continuing education”

Respondent 10: “Need to help all firms with {un-intelligible}”

Respondent 11: “Funerals conducted by funeral home staff that does not have a license and embalming performed by unlicensed staff without a licensed embalmer on site.”

Respondent 14: “Checking to see that lic. personel are performing funerals and embalming”

Respondent 15: “Alabama insurance trust program-improvement is needed!”

Respondent 16: “preneed trusting”

Respondent 17: “The biggest problem is unlicensed embalmers performing embalming on a daily basis and the state board ignoring what is known state wide to be a common practice. I have been in this business 20 years in this state. Example of #7 When an establishment is doing 500+ calls per year and one licensed embalmer is employed, there is no way one person is embalming every body. And the non-licensed personnel at that establishment will tell you without hesitation that they embalm all the time. And the state board overlooks it every year. It’s happening all over Alabama.”

Respondent 19: “I feel that XXXXXX XXXXXXXX job should be abolished. He only help the Big Man funeral home. Mr. XXXXXX is the only one that you can get help from and the office secretary is very very hateful. I don’t think even like herself. You do not get any service from the board. It’s only a “joke”. They do not even go by the laws. Each funeral is required to have a hearse. Some companies have 15 funeral home and only 5 hearses. Some companies only have 1 funeral director managing 3 to 6 funeral home. Is this treating the public ok? They pay for services but don’t get. The board could care less. All they are doing is taking a pay check to sat on their asses.”

Respondent 20: “Pre-need laws nobody knows enough about them. What to do with the families who have pre-needs with firms that go out of business.”

Respondent 22: “Preneed funeral procedure training needs to be better addressed.”

Respondent 23: “Licensed coroners should not be allowed to participate in funeral home ownership, or be employed by a funeral because of their solicitation practices. Furthermore, I see nothing begin done to address this issue!”

Respondent 26: “Preneed”

Respondent 28: “Having absentee (unlicensed) owners. Suggestions: 1) Need to have a website 2) computerize the office”

Respondent 29: “I.D. all deceased body effective 7/06. All establishment must i.d. all deceased bodies that enter and leave establishment.”

Respondent 31: “The issue of continuing education is a joke. It is only to put money in someone’s pocket. It is a joke in Florida & is expensive.”

Respondent 32: “Being properly licensed. The board isn’t doing very much, if anything to address this issue.”

Respondent 33: “County coroner’s allegiance to certain funeral homes/taking business away from others. No information regarding what is being done – grievance has issues of the proving of incidences.”

Respondent 34: “1) solicitations 2) pre-need. I believe every establishment is responsible for the service it provides. Bad relationship only hurts the establishment. The partial help that’s given by state in many cases are biased. For the most part funeral homes work with each other.”

Respondent 36: "Having non licensing personal doing work of a person who is licensing. The board is checking establishment more closer."

Respondent 37: "To many unlicensed people practicing in the field and the board does not investigate complaints of unlicensed people. They seem to work with the unlicensed people. Mr. XXXXXX XXXXXX and Mr. XXXXXX XXXXXX are controlling who is nominated for the board. Copies of exams have been circulating from people in the board office prior to the examination. No web site because Mr. XXXXXX and "Mr. XXXXXX do not want individuals to know about issues concerning the board."

Respondent 38: "Continuing education"

Respondent 39: "licensed individuals. Not much."

Respondent 43: "Regulation of unlicensed personnel performing embalming, funeral directing and waiting on families. Complaints about unlicensed personnel is not being addressed. Complaints are just laid to rest and no action is taken."

8. Do you think the Alabama Board of Funeral Service and its staff are satisfactorily performing their duties?

30 Yes

8 No

4 Unknown

1 No Opinion

Respondent 20: "One exception – funeral homes giving families a hard time when they buy a casket from a third party. Funeral homes and package deals."

Respondent 37: "To many individuals, complaints going unanswered, establishments breaking the rules letting unlicensed individuals embalm and direct funerals and make funeral arrangements. They sit it up in the office and push pencils all day."

Respondent 43: "Web site needed badly. All other states have web sites. They need someone like XXXX XXXX to investigate the actions of the board, especially XXXXXX XXXXXX and XXXXXX XXXXXX for their unlawful actions."

9. Has any member of the Alabama Board of Funeral Service or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

3 Yes

40 No

Respondent 20: "Two good men in office. Thank you."

Respondent 32: "XXXXXXXX XXXXXX is a crook!"

Respondent 37: "Mr. XXXXXX has stated to numerous individuals that licenses can be purchased for 5 suits and 1,000.00. Tests have been sold. Individuals who are not in compliance have been paid off when Mr. XXXXXX inspects. He has also offered to embalm for my firm and also is affiliated with a funeral home in XXXXXXXXXXXX, Alabama and embalms for them on the side. XXXXXXXXXXXX Funeral Home, XXXXXXXXXXXX, Alabama and now he is hanging around XXXXXXXXXXXX XXXXXXXXXXXX Funeral Home. He and Mr. XXXXXX should be removed from office by Attorney General XXXX XXXX. All types of laws are being broken. Numerous individuals are operating two funeral homes under one establishment which is against the law. Mr. XXXXXX and Mr. XXXXXX has knowledge and refuse to do anything about

it. Mr. XXXXXX and Mr. XXXXXX were at one time selling C.S.H.A. pamphlets for \$1500.00 payable only in cash. The office need to be closed down and transferred to the Secretary of State office like other states, go up on license fees (which both of them will not do because they want everything the same). Mr. XXXX needs to come in and remove all of them for office. Mr. XXXXXX and Mr. XXXXXX determines who is getting on the board. They are supposed to be appointed by the governor, but Mr. XXXXXX and Mr. XXXXXX determine who their bosses are. Someone, please do something about our profession. It is rated #50 in all of the United States.”

Respondent 43: “Mr. XXXXXX has asked and rec’d extra money, 600.00 to 1,000.00 from XXXXXX Funeral Home, XXXXXX, Alabama if we did not have enough caskets in our show room. Also this has been done at other funeral homes. Mr. XXXXXX has inquired about performing embalming for \$300.00 at our establishment. He has also informed us about tutoring for a sum of \$1,000.00 for people interest in taking the funeral directors examination. Worked for XXXXXXXXX Funeral Home, XXXXXXXXXX while on state payroll. Judge XXXXX XXXXXXXXX, owner of XXXXXXXXX & XXXXXXXXXX, XXXXXXXXXX, Alabama has operated seventeen years as an establishment inside of another establishment. The law states only one establishment per site. This has been occurring for over seventeen years and Mr. XXXXXX and Mr. XXXXXXXX has turned their heads and look the other way. Mr. XXXXX XXXXX, who is a member of the board of XXXXX, Alabama operates XXXX XXXXXX Funeral Home, XXXXXXXX, Alabama and XXXX-XXXXXX Funeral Home, XXXXXXXXXX, Alabama. However, he is advertising XXXXX Funeral Chapel which is not located in the licensed funeral directors and funeral home list of licensed agencies. False advertising and a board member. Mrs. XXXX XXXXXXXX-XXXXXXX of XXXXXXXX-XXXXXX Funeral Home, Montgomery, Alabama was convicted with a felony drug trafficking while employed at the United States Postal Services in XXXXXXXXXX, Alabama. She is a convicted felon. She received a license through the board. Mr. XXXXX X. XXXX of XXXXX, Alabama is an unlicensed embalmer and funeral director practicing embalming at X.X. XXXXXXXXX Funeral Home, XXXXX, Alabama, XXXXX XXXXXXXXX Funeral Home, XXXXX, Alabama, XXXXX Funeral Home, XXXXXXXXXX, Alabama and XXXXXXXX Funeral Home, XXXXXXXX, Alabama. XXXXXXX XXXXXXXX and XXXXXXXX XXXXXXXX know of this through complaints but nothing has been done about it. Unlicensed people conducting funerals, embalming and making arrangements is rampant in the State of Alabama. It is due to XXXXXXX XXXXXXXX and XXXXXXXX XXXXXXXX. This is the reason why they do not want a Web site because certain individuals such as XXXXX XXXXXXXX of XXXXXXXXXX, Alabama, XXXXXXX XXXXXXXXX of XXXXXXXXXX, Alabama has been placed on the board prior to serving ten years in the funeral home industry. XXXX XXXX, our attorney general, along with the U.S. Attorneys office should investigate the Alabama Board of Funeral Service. the nomination process is flawed. Mr. XXXXXXXX notified XXXXX XXX of XXXXXXXXXX, Alabama (XXXXXX Funeral Home), stated to the board officials on April 2006 that he was guilty in contact her and ask another individual, XXXXX XXXXXXXX of XXXXXXXXXX, Alabama to nominate her. Also Mr. XXXXXXXX contacted XXXXXXX XXXXXXXX of XXXXXXXX Funeral Home, XXXXXXXXXX, Alabama and asked him to nominate XXXXX XXXXX of XXXXX, Alabama and vise versa. They both nominated each other in the board meeting. Mr.

XXXXXX and Mr. XXXXXXXX have a long history of controlling what individuals are placed on the board, who are considered their bosses. The Alabama Board of Funeral Service should be transferred to the Secretary of State Office. It should be abolished by the Sunset committee, terminate Mr. XXXXXXXX and Mr. XXXXXXXX and possibly seek fines for them. The reason funeral service is so messed up in Alabama is due to them. The law requires a book with the name of the licensee, address and the year the licensee was issued a license. The book was printed but without the year the person received the license. This is something that the law stipulates but Mr. XXXXXXXX and Mr. XXXXXXXX will not go by the law. Mr. XXXXXXXX always states that the licensees of the state do not want to raise the fees. This is not true. If the board is going to do its job, we don't mind the license fees to go up. Once, again, I hope the Sunset committee abolished the board and transfer it to the Secretary of State office, which is what other states are doing now. Sincerely, A licensee.

Complainant Questionnaire

We surveyed fifteen complainants. Of those, nine responded.

1. Was your complaint filed with the Alabama Board of Funeral Service by:

6 Mail 1 Phone 1 Fax _____ Email 1 Other _____ Unknown

Respondent 7: "Called & reported complaint via telephone. Faxed to number given and mailed to address given as well."

Respondent 9: "in person"

2. Was receipt of your complaint promptly acknowledged?

5 Yes 3 No 1 Unknown

If yes, approximately how long after you filed your complaint were you contacted by the Alabama Board of Funeral Service?

_____ Immediately 2 Within 10 days 2 Within 20 days

_____ Within 30 days 2 More than 30 days 2 Did not respond

1 Unknown

Respondent 1: "Not initially"

Respondent 7: "Never rec'd noticed that complaint received"

3. Was the employee who responded to your complaint knowledgeable and courteous?

_____ Knowledgeable 2 Courteous 7 Both _____ Neither

Respondent 8: "Very courteous & knowledgeable."

4. Did the Alabama Board of Funeral Service communicate the results of investigating your complaint to you?

6 Yes 3 No _____ Unknown

5. Do you think the Alabama Board of Funeral Service did everything it could to resolve your complaint?

4 Yes

4 No

1 Unknown

Respondent 1: "Within the limitations described to me that they have to work with. They need to have more authority to address problems with individual funeral homes."

Respondent 8: "I do not know if anything was done at all. Have not received any additional communication from agency."

6. Were you satisfied with your dealings with the Alabama Board of Funeral Service?

4 Yes

4 No

1 person declined to answer

Respondent 3: "Thanx to Mr. Warren Higgins for relentless pursuit – the end result was as I'd hoped."

Respondent 4: "??"

Respondent 5: "I retained a lawyer who solved my problem within 1 week."

Respondent 6: "In reference to my complaint, the only resolve for me would have been if the Alabama Board of Funeral Services was responsible for taking away the license of XXXXXXXX XXXXXXXXX owner of XXXXXXXXX Funeral Service. This man went to prison in 1984 85 counts of fraud and even today still defraud grieving innocent people like me. My husband died June 26, 2004 and I paid my \$8,100 funeral bill in August 2004. Mr. XXXXXXXX XXXXXXXXX never paid the assignment loan back to XXXXXXXX Financial Corp. From Sept. 2005 thru January 2005 I was harassed by this financial institution. January 20, 2005 Mr. XXXXXXXXX paid half \$4,100 and as you can see that wasn't the full amount owed. I still got one more call from this company after January 2005. My biggest disappointment with the board is in what I thought their job was. Regulating how funeral homes operate their businesses. Mr. XXXXXXXX XXXXXXXX and Mr. XXXXXXXX XXXXXXXX are the two people I directed my complaints too. Verbally reprimanding Mr. XXXXXXXX XXXXXXXXX was not enough punishment for me for all the pain and suffering I endured while I was trying to deal with the loss of my loved one. P.S. Hire some board members with back bone to work for the people."

Respondent 8: "Not knowledge as to any action being taken."

APPENDICES

2006 Operations Plan

State of Alabama EBO Form No. 4b		AGENCY NAME: <u>Alabama Board of Funeral Service</u> FY 2006 SMART OPERATIONS PLAN		Agency No. <u>316</u> Page <u>1</u> of <u>1</u>	
		ACTUAL FY04	BUDGET FY05	BUDGET FY06	
MISSION					
VISION (Optional)					
VALUES (Optional)					
CRITICAL ISSUES (Optional) Internal External					
PROGRAM	653 Professional & Occupational Licensing & Regulation (\$ in _____)	197,394	236,553	246,596	
ACTIVITY	0468 Funeral Service Licensing & Regulation (\$ in _____)				
MISSION	To examine and license qualified funeral directors and embalmers and enforce the State's funeral service laws.				
GOAL(S)	To ensure that consumers are dealt with licensed qualified professionals. To ensure that all funeral establishments maintain adequate standards. To minimize illegal practices within the profession. To enhance overall standards through laws and regulations.				
WORKLOAD	Number of applicants for funeral director examinations should slightly increase.	103	105	110	
	Number of applicants for embalmer examinations should slightly decrease.	9	6	3	
	Number of total licenses issued should remain constant or slightly increase.	3,920	3,950	4,000	
	Number of total inspections for funeral establishments should increase slightly.	462	475	500	
CRITICAL ISSUES Internal External	Internal: Staffing and funding limitations to provide optimal enforcement. External: Increase in employee benefits draining funds from other operational areas. Mortuary school graduates taking national board exam will lower applicants taking state exam.				
OBJECTIVES					
Spending	To keep spending increases at a minimum despite benefit costs. (\$ in _____)	197,394	236,553	246,586	
	(\$ in _____)				
Staffing	Maintain current staffing. (FTE)	3.0	3.0	3.0	
Efficiency	Reduce the time required to process applications through improved office equipment. (Days per year)	127	105	95	
Quality	To reduce the number of significant violations found during routine annual inspections.	33	27	20	
STRATEGIES	Upgrade office equipment to provide more efficient operation. Work closely with the legislature to promote our goals. To increase the number of establishment inspections for problem areas.				

2006 Performance Report

Smart Quarterly Performance Report											
Fiscal Year: 2006											
Agency: 316 Funeral Service, Alabama Board of											
Org:											
Program: 653 PRO AND OCCU LICENSING AND REG											
Activity: 0468 FUNERAL SERVS LICENSING & REG											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload/Cost Factor	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
WC1: # of applicants for funeral director exam	0	30	34	25	0	25	0	30	0	110	0
WC2: # of applicants for embalmer exam	0	1	1	1	0	1	0	0	0	3	0
WC3: # of total licenses issued	0	3,360	3,391	435	0	125	0	80	0	4,000	0
WC4: # of inspections	0	10	11	50	0	200	0	240	0	500	0
Spending	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
SP1: To keep spending increases at a minimal	0	76,516	48,934	54,568	0	64,648	0	50,854	0	246,586	0
Staffing	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
ST1: To maintain current staffing	0	3	3	3	0	3	0	3	0	3	0

Efficiency	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Reduce the time to process license applications	# of days	50	48	25	0	10	0	10	0	95	0
Quality	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QUI: To reduce the number of significant violations found on inspections	0	1	1	6	0	6	0	7	0	20	0

2007 Operations Plan

Agency/ Org	316 - Funeral Service, Alabama Board of							
Organization	-							
Program	653 - PRO AND OCCU LICENSING AND REG							
Activity	-							
Mission	To examine and license qualified funeral directors and embalmers an enforce state's funeral service laws, Title 34, Chapter 13							
Vision	To ensure that Alabama citizens receive professional and competent care during their time of need.							
Values	Commitment, Citizenship, Competence, and Compassion.							
Goals								
<p>G1: To conduct inspections of all funeral establishments to ensure that they comply with expected standards. (GP-7)</p> <p>G2: To conduct investigations of suspected violations of laws and regulations. (GP-7)</p> <p>G3: To administer examinations for license applicants. (GP-7)</p> <p>G4: To promote ethics and integrity in working with consumers. (GP-7)</p>								
Critical Issues								
<p>Internal ICI1: To keep operating costs minimal to provide for optimal enforcement resourses. (G1)</p> <p>External ECI1: Must maintain adequate funding to provide for optimal enforcement. (G1)</p> <p>External ECI2: The shortage of licensed professional available for employment. (G3)</p>								
Strategies								
<p>1). Dedication to efficiently conduct inspections at minimal costs</p> <p>2). Encourage establishments to use educational programs to attract prospective employees.</p> <p>3). Promote opportunities to better serve consumers.</p>								
Workloads							Performance Indicator	
Number of examinations for funeral directors and embalmers.							#	
FY 07 Projected: 110 FY 07 Target: 0								
FY07 Quarterly Projections:	1 st Qtr:		2nd Qtr:		3 rd Qtr:		4 th Qtr:	
Number of funeral establishment inspections.							#	
FY 07 Projected: 500 FY 07 Target: 0								
FY07 Quarterly Projections:	1 st Qtr:		2nd Qtr:		3 rd Qtr:		4 th Qtr:	
Total number of licenses issued.							#	
FY 07 Projected: 5,010 FY 07 Target: 0								

FY07 Quarterly Projections:	1 st Qtr:		2nd Qtr:		3 rd Qtr:		4 th Qtr:	
Objectives							Performance Indicator	
Spending	To keep spending minimum despite benefit costs.						Budget	
FY 07 Projected: 255,270 FY 07 Target: 0								
FY07 Quarterly Projections:	1 st Qtr:		2nd Qtr:		3 rd Qtr:		4 th Qtr:	
Staffing	Maintain current staffing.						# of employees	
FY 07 Projected: 3 FY 07 Target: 0								
FY07 Quarterly Projections:	1 st Qtr:		2nd Qtr:		3 rd Qtr:		4 th Qtr:	
Efficiency	Reduce time required to applications.						# of days	
FY 07 Projected: 90 FY 07 Target: 0								
FY07 Quarterly Projections:	1 st Qtr:		2nd Qtr:		3 rd Qtr:		4 th Qtr:	
Quality	To reduce the number of inspection violations through adequate enforcement.						# of violations	
FY 07 Projected: 16 FY 07 Target: 0								
FY07 Quarterly Projections:	1 st Qtr:		2nd Qtr:		3 rd Qtr:		4 th Qtr:	
Source of Funds								
Fund Code	Fund Name					Requested FY 07	Budgeted FY 07	
0362	Alabama Funeral Directors and Embalmers Fund					\$255,270	\$0	
Total of all Funds Listed Above:						\$255,270	\$0	

Statutes

CHAPTER 13. FUNERAL SERVICES.

ARTICLE 1. GENERAL PROVISIONS.

§ 34-13-1. Definitions.

(a) For purposes of this chapter, the following terms shall have the following meanings:

(1) Accredited school or college of mortuary science. A school or college approved by the Alabama Board of Funeral Service and which maintains a course of instruction of not less than 48 calendar weeks or four academic quarters or college terms and which gives a course of instruction in the fundamental subjects as set forth, but not limited to, the following:

- a. Mortuary management and administration.
- b. Legal medicine and toxicology as it pertains to funeral directing.
- c. Public health, hygiene, and sanitary science.
- d. Mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony; discoloration, its causes, effects, and treatment; treatment of special cases; restorative art; funeral management; and professional ethics.
- e. Anatomy and physiology.
- f. Chemistry, organic and inorganic.
- g. Pathology.
- h. Bacteriology.
- i. Sanitation and hygiene.
- j. Public health regulations.
- k. Other courses of instruction in fundamental subjects as may be prescribed by the Alabama Board of Funeral Service.

(2) American Board of Funeral Service Education. That funeral service educational organization which is an agency granted official recognition by the United States Secretary of Education and which is composed of members representing the American Association of College of Mortuary Science, the Conference of Funeral Service Examining Board of the United States, Inc., the National Association of Colleges of Mortuary Science, and the University Mortuary Science Education Association and which has as its object the furtherance of education in the field of funeral service and in fields necessary to, or allied with, the field of funeral service, and further to formulate standards of funeral service education and to grant accreditation to qualified schools and colleges of mortuary science and to do all things incidental to the foregoing.

(3) Apprentice embalmer or embalmer's apprentice. Any person engaged in the study of the art of embalming under the instructions and supervision of a licensed embalmer practicing in this state.

(4) Apprentice funeral director or funeral director's apprentice. Any person operating under or in association with a funeral director for the purpose of learning the business or profession of funeral director, to the end that he or she may become licensed under the provisions of this chapter.

(5) Authorizing agent. A person at least 18 years of age, except in the case of a surviving spouse or parent, who is legally entitled to order the cremation or final disposition of particular human remains.

(6) Board. The Alabama Board of Funeral Service.

(7) Cemetery. A place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either land or earth interment; a mausoleum for vault or crypt entombment; a structure or place used or intended to be used for the interment of cremated remains; cryogenic storage; or any combination of one or more thereof.

(8) Cemetery authority. Any individual, person, firm, profit or nonprofit corporation, trustee,

partnership, society, religious society, church, association or denomination, municipality, or other group or entity, however organized, insofar as they or any of them may now or hereafter establish, own, operate, lease, control, or manage one or more cemeteries, burial parks, mausoleums, columbariums, or any combination or variation thereof, or hold lands or structures for burial grounds or burial purposes in this state and engage in the operation of a cemetery, including any one or more of the following: The care and maintenance of a cemetery; the interment, entombment, and memorialization of the human dead in a cemetery; the sale, installation, care, maintenance, or any combination thereof, with respect of monuments, markers, foundations, memorials, burial vaults, urns, crypts, mausoleums, columbariums, flower vases, floral arrangements, and other cemetery accessories, for installation or use within a cemetery; and the supervision and conduct of funeral and burial services within the bounds of the cemetery. It is the legislative intent of this chapter that a cemetery authority, to the extent that it engages in any of the activities described in this subdivision, shall not be affected by this chapter and shall not be deemed to have entered into or engaged in the practice of funeral directing, embalming, or funeral establishment operation.

(9) Cremation. The technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

(10) Cremationist. A person who performs the procedure of cremation.

(11) Crematory. A building or portion of a building that houses a retort and that may house a holding facility for purposes of cremation and as part of a funeral establishment.

(12) Embalmer. Any person engaged or holding himself or herself out as engaged in the business, practice, science, or profession of embalming, whether on his or her own behalf or in the employ of a registered and licensed funeral director.

(13) Embalming. The practice, science, or profession, as commonly practiced, of preserving, disinfecting, and preparing by application of chemicals or other effectual methods, human dead for burial, cremation, or transportation.

(14) Funeral directing. The practice of directing or supervising funerals, the practice of preparing dead human bodies for burial by means other than embalming, or the preparation for the disposition of dead human bodies; the making of arrangements or providing for funeral services or the making of financial arrangements for the rendering of these services or the sale of this merchandise or supplies; the provision or maintenance of a place for the preparation for disposition of dead human bodies; or the use of the words or term "funeral director," "undertaker," "mortician," "funeral parlor," or any other word or term from which can be implied the practice of funeral directing; or the holding out to the public that one is a funeral director or engaged in a practice described in this subdivision.

(15) Funeral director. A person required to be licensed to practice the profession of funeral directing under the laws of this state, who meets the public, who plans details of funeral services with members of the family and minister or any other person responsible for such planning, or who directs, is in charge, or apparent charge of, and supervises funeral service in a funeral home, church, or other place; who enters into the making, negotiation, or completion of financial arrangements for funerals, including, but not limited to, the sale and selection of funeral supplies, or who uses in connection with the profession of funeral directing the words or terms "funeral director," "undertaker," "funeral counselor," "mortician," or any other word, term, or picture or combination thereof when considered in context in which used, from which can be implied the practicing of the profession of funeral directing or that the person using such word, term, or picture can be implied to be holding himself or herself out to the public as being engaged in the profession of funeral directing; and for all purposes under Alabama law, a funeral director is considered a professional; provided, for the purposes of this chapter, the term or terms shall not include any cemetery authority as defined in this section.

(16) Funeral establishments. The term "funeral home," "mortuary," or "funeral establishment" shall be construed to be a place at a specific street address or location where the profession of funeral directing, embalming, or cremation, as defined in this chapter, is practiced in the care, planning, and preparation for burial or cremation or transportation of human dead, but shall not include any cemetery or land or structure owned, operated, leased, controlled, or managed by any cemetery authority as a cemetery. All of such places shall consist of and shall maintain the following facilities:

a. A preparation room equipped with a sanitary floor and necessary drainage and ventilation and containing necessary approved tables, instruments, and

supplies for the preparation and embalming of dead human bodies for burial, cremation, and transportation.

b. A display room containing a stock of adult caskets and funeral supplies.

c. At least one motor vehicle equipped for transporting human remains in a casket or urn.

d. If engaged in the practice of cremation, at least one operable retort for cremation and an adequate supply of urns for display and sale.

(17) Funeral supplies or funeral merchandise. Caskets made of any material for use in the burial or transportation of human dead; outer receptacles, when sold by a funeral director, including burial vaults and urns, for cremated human remains; clothing used to dress human dead when sold by a funeral director; and all equipment and accouterments normally required for the preparation for burial or funeral and other disposition of human dead.

(18) Mortuary science. The scientific, professional, and practical aspects, with due consideration given to accepted practices, covering the care, preparation for burial, or transportation of dead human bodies, which shall include the preservation and sanitation of the bodies and restorative art and those aspects related to public health, jurisprudence, and good business administration.

(19) Operator. A person, corporation, firm, legal representative, or other organization owning or operating a funeral establishment.

(20) Practical embalmers. Any person who has been actively and continuously engaged or employed in the practice of embalming under the supervision of a licensed embalmer for four consecutive years immediately preceding May 1, 1975, and has been issued a license as a practical embalmer under the grandfather provisions of this chapter.

(21) Processing or pulverization. The reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments or granulated particles by manual or mechanical means.

(22) Retort. An enclosed space within which the cremation process takes place.

(23) Temporary container. A receptacle for cremated remains, usually composed of cardboard, plastic, or similar material, that can be closed in a manner that prevents the leakage or spillage of the cremated remains or the entrance of foreign material, and is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered or buried.

(24) Urn. A receptacle designed to encase cremated remains.

(b) Nothing in this chapter shall require a funeral director or funeral establishment to have or provide a chapel or to restrict, in any manner, the conduct of funeral services from a church or chapel.

(c) Nothing contained in the definition of funeral directing, or in any other provision of this chapter, shall be deemed or construed to be applicable to, or to regulate or restrict, in any manner, cemetery authorities in the conduct of activities of a cemetery authority as defined in this chapter; or to be applicable to, or to regulate or restrict, in any manner, the carrying on by any cemetery authority of any and all activities, functions, practices, and services which may now or hereafter (i) constitute any part of the operation or management of a cemetery or of the property of a cemetery as defined in this chapter or (ii) otherwise consist of the interment or entombment of the human dead or memorialization of the human dead in any manner within a cemetery property.

(Acts 1975, No. 214, p. 705, § 2; Acts 1983, No. 83-746, p. 1235, § 1; Act 2002-239, p. 498, § 1.)

§ 34-13-2. Purpose of chapter. It is declared and established that the procedures for making final disposition of human dead, including embalming and funeral directing, are so affected with the public interest as to require regulation and control of such included occupations and that, additionally, such regulation and control are necessary for the prevention of the spread of infectious and contagious diseases, for the protection of the health and welfare of the people of the state and that all of the provisions of this chapter and regulations authorized to be made are necessary to effectuate its purpose; and all of the provisions of this chapter shall be construed liberally and in a manner to carry out its obvious intents and purposes.

(Acts 1975, No. 214, p. 705, § 1.)

§ 34-13-3. Applicability of chapter. This chapter does not apply to any cemetery or cemetery authority or

to any public institution, medical college, county medical society, anatomical association, college of embalming, or any officer thereof, or to any other recognized person carrying out the provision of the statutes of the State of Alabama prescribing the conditions under which indigent human dead bodies are held subject for scientific or anatomical study; provided, that nothing in this section shall be construed to give any cemetery or cemetery authority or any other person or entity the right to enter into or engage in any funeral home operation or the practice of embalming or funeral directing or any related funeral home or funeral directing activities. Nor shall this chapter include any temporary or occasional or extra help to assist in the conduct of a funeral employed on such basis by a funeral director, provided such funeral is under the general supervision of a licensed funeral director.
(Acts 1975, No. 214, p. 705, § 11.)

§ 34-13-4. Publication of statutes and regulations. Upon request, the board shall distribute to funeral directors, embalmers and apprentices and such other persons as may be interested therein, in pamphlet form, the provisions of this chapter together with all rules and regulations prescribed, adopted or promulgated pursuant to this chapter, together with a complete and current list of all persons and establishments licensed under this chapter.
(Acts 1975, No. 214, p. 705, § 35; Acts 1981, No. 81-200, p. 234, § 4; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-5. Courts having jurisdiction; initiation of proceedings.

Circuit courts shall have jurisdiction in all prosecutions arising under this chapter. The district attorney is authorized to institute prosecutions for violations of this chapter by information, or prosecutions may be instituted by indictment or by complaint verified before any magistrate.
(Acts 1975, No. 214, p. 705, § 38.)

§ 34-13-6. Recourse by a licensee against unreasonable orders or wrongful interpretations by the board.

In the event a licensee under this chapter should have cause to believe that the board, or a member or members thereof, has used the powers of the board to promulgate orders or rulings or requirements not intended by this chapter and that such orders or rulings or requirements are used to subject said licensee to unreasonable and wrongful interpretations of this chapter by the board or that the board or a member or members thereof have imposed the powers of the board or the wrongful interpretations of this chapter upon the licensee to such extent that it constitutes harassment of the licensee, then the licensee may take an appeal for relief to the circuit court of the county in which the licensee practices embalming, funeral directing or operates a funeral establishment as prescribed in Section 34-13-31.
(Acts 1975, No. 214, p. 705, § 47.)

§ 34-13-7. Embezzlement, abstracting or willfully misapplying moneys collected; bribery.

Each and every person who embezzles, abstracts or willfully misapplies any of the moneys, funds, security or credit of the Alabama Board of Funeral Service or who misuses any of the funds or fees so collected, by virtue of this chapter, and any person who, with like intent, aids or abets any person in violation of this chapter, or any portion thereof, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor exceeding \$5,000.00 and imprisonment in the penitentiary for a period of not less than one year and not more than five years, and the principal offenders and those aiding and abetting same may be charged in the same count, and separate offenses may be charged, in separate counts, in the same indictment and tried together. Any person found guilty of offering or of accepting a bribe whereupon any person is illegally licensed to practice embalming, funeral directing or to operate a funeral establishment in this state shall be punished by a fine of not less than \$500.00 and may be imprisoned in the penitentiary for a period of one to three years, and the principal offenders and those aiding and abetting same may be charged in the same count and separate offenses may be charged in separate counts in the same indictment and tried together.
(Acts 1975, No. 214, p. 705, § 48.)

§ 34-13-8. Certified copy of official documents.

On application of any person and payment of the cost thereof, the executive secretary of the board shall furnish, under the seal of the board and signed by the executive secretary, a certified copy of any license,

rule, regulation or order. In any court or proceeding such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, rule or order and that such is effective as of the date of such certificate.

(Acts 1975, No. 214, p. 705, § 51.)

§ 34-13-9. Pricing requirements and methods of quoting prices.

Each funeral home shall have a card or brochure in each casket stating the price of the funeral service using said casket and listing the services and other merchandise included in the price. Where there are separate prices for the casket, the professional services, the use of facilities and the use of equipment, such card shall indicate the price of each such item, except in those instances such as unknown transportation costs and similar items, which services must be stated with the price to be fixed upon billing. When the arrangers decide on the type of service desired, the firm must provide or cause to be provided to the person or persons making the arrangements, at the time such arrangements are completed and prior to the time of rendering the service or providing the merchandise, a written statement showing (1) the price of the service that the person or persons have selected and what is included therein; (2) the price of each of the supplemental items of service and merchandise requested; (3) the amount involved for each of the items for which the funeral service home will advance money as an accommodation to the family; and (4) the method of payment. No additional charges shall be made without approval of the arrangers except as stated in this section.

(Acts 1975, No. 214, p. 705, § 52.)

§ 34-13-10. Violations.

Unless otherwise provided herein, violation of any part of this chapter shall be a misdemeanor and shall be punishable as such under the laws of Alabama. It is further provided that those actions specifically enumerated in subdivisions (2)a. through (2)f., (2)h., (2)i., (2)m. and (2)n. of Section 34-13-56 shall be punishable as a misdemeanor and may be prosecuted accordingly.

(Acts 1975, No. 214, p. 705, § 53; Acts 1981, No. 81-200, p. 234, § 4.)

§ 34-13-11. Authorizing agent.

The following persons, in the priority listed herein, may serve as an authorizing agent:

(1) The decedent's spouse at the time of the decedent's death.

(2) The decedent's surviving children. If there is more than one child who qualifies as an authorizing agent, any such child may serve as the authorizing agent except, in the case of a cremation, such child must submit by affidavit the consent of all other surviving children to serve as authorizing agent. If any surviving child is unable to be notified of a pending cremation, the remaining children may select the authorizing agent by submission of legal documentation of the inability to notify the absent child or children. If the funeral director receives written objection to such cremation from any child before cremation, no cremation shall be performed except upon the written withdrawal of the objection or upon the order of a court of competent jurisdiction.

(3) The decedent's surviving parents. If the decedent is survived by two parents, either parent may serve as the authorizing agent except, in the case of a cremation, such parent must submit by affidavit the consent of the other surviving parent to serve as authorizing agent. If the other surviving parent is unable to be notified of a pending cremation, a parent may serve as the authorizing agent by submission of legal documentation of the inability to notify the absent parent. If the funeral director receives written objection to such cremation from either parent before cremation, no cremation shall be performed except upon the written withdrawal of the objection or upon the order of a court of competent jurisdiction.

(4) The decedent's surviving siblings. If there is more than one sibling who qualifies as an authorizing agent, any sibling may serve as the authorizing agent except, in the case of a cremation, such sibling must submit by affidavit the consent of all other surviving siblings to serve as authorizing agent. If any surviving sibling is unable to be notified of a pending cremation, the remaining siblings may select the authorizing agent by submission of legal documentation of the inability to notify the absent sibling or siblings. If the funeral director receives written objection to such cremation from any sibling before cremation, no cremation shall be performed except upon the written withdrawal of the objection or upon the order of a court of competent jurisdiction.

(5) Any person acting on the decedent's signed written instructions regarding final disposition contained in a preneed funeral contract and, in the case of cremation, a cremation authorization form

signed by the decedent.

(6) Any person serving as executor or legal representative of a decedent's estate and acting on the decedent's signed, written instructions contained in a will or other writing, regardless of whether the will has been probated.

(7) The person in the next degree of kinship under the laws of descent and distribution to inherit the decedent's estate. If there is more than one person of the same degree, any such person may serve as the authorizing agent.

(8) In the case of indigents or any other individuals whose final disposition is the responsibility of the state or any of its subdivisions or agencies, a public administrator, medical examiner, coroner, or any other public official charged with arranging the final disposition shall serve as the authorizing agent in the absence or refusal of any person described in subdivisions (1) to (7), inclusive.

(9) In the absence or refusal of any person described in subdivisions (1) to (7), inclusive, any person willing to assume the responsibility as authorizing agent.

(Act 2002-239, p. 498, § 3.)

§ 34-13-12. Liability of funeral director or establishment.

(a) A funeral director or funeral establishment that has received expressed written authorization for final disposition or cremation from the authorizing agent shall not be liable for the final disposition or cremation of the human remains designated by the authorization if the disposition or cremation is performed in accordance with this chapter, nor shall a funeral director or funeral establishment be liable for following, in a reasonable fashion, the instructions of any person who falsely represents being the proper authorizing agent.

(b) Absent the receipt of a court order or other suitable confirmation of resolution, a funeral director or funeral establishment may not be liable for refusing to accept human remains for final disposition or for refusing to perform a cremation, if the funeral director or other agent of the funeral establishment: (1) Is aware of any dispute concerning the final disposition or cremation of the human remains; or (2) has a reasonable basis for questioning any of the representations made by the authorizing agent. A funeral director or other agent of the funeral establishment may not be liable for refusing to accept human remains for any lawful reason.

(Act 2002-239, p. 498, § 3.)

ARTICLE 2. BOARD OF FUNERAL SERVICE.

§ 34-13-20. Creation; composition; qualifications of members; appointment; terms of office; abolition of Board of Embalming.

There is hereby created and established the Alabama Board of Funeral Service, consisting of seven members, each of whom shall be citizens of the United States and of the State of Alabama. All members of the former Alabama Embalming Board who are holding office on September 10, 1975, shall, by virtue of said office, become members of the Alabama Board of Funeral Service for the term ending December 31, 1976; provided, that not more than one member of the Alabama Board of Funeral Service may reside in the same district as herein created under Section 34-13-21, and if more than one member of the State Embalming Board resides in one district at the time of the organization of said board, the Governor shall select one member of said Embalming Board to be a member of the original Alabama Board of Funeral Service from said district, and the other member of said Embalming Board shall not be eligible for membership on said board.

At a special meeting called for such purpose, to be held in Montgomery, Alabama within 45 days from September 10, 1975, the Alabama Funeral Directors Association, Incorporated and the Alabama Funeral Directors and Morticians Association, Incorporated, in joint meeting, shall nominate three qualified persons for each of the positions as members of the original board of the Alabama Board of Funeral Service which are not filled by members of the State Embalming Board. The names of such persons so nominated shall be promptly certified by the secretary of the Alabama Funeral Directors Association, Incorporated, and the Alabama Funeral Directors and Morticians Association, Incorporated, to the Governor of the State of Alabama who shall appoint the members of said board from among the persons so nominated; provided, that not more than four members of said board at any time may be members of the same race. Four members shall be appointed for a term ending December 31, 1977, and the board shall be constituted so that the terms of three members of said board will end December 31, 1976, and the terms of four members will end December 31, 1977. The terms of the members of the State Embalming Board, who become members of the Alabama Board of Funeral Service under this chapter, shall expire December 31, 1976, unless there are more than three such members, in which event, the Governor shall designate which of the three members of the State Embalming Board shall serve for terms ending December 31, 1976, and which shall serve for terms ending December 31, 1977.

After selection of the original members of the Alabama Board of Funeral Service and during October of each year, all embalmers and all funeral directors licensed under this chapter shall meet in Montgomery, Alabama at a time and date in October and at a place to be fixed by the Alabama Board of Funeral Service for the purpose of nominating three persons to the Governor of Alabama for each vacancy on said board, and the Governor shall promptly appoint one of the three persons so nominated.

The successors to the original members of the Alabama Board of Funeral Service shall be selected for terms of two years. After the terms of the original members of the Alabama Board of Funeral Service, four of said members serving on said board must be practicing and licensed embalmers in Alabama for the last 10 consecutive years immediately preceding their appointment and shall be licensed embalmers and funeral directors in this state under this chapter. Three of said members shall have been actively engaged in funeral directing in Alabama for the last 10 consecutive years preceding their appointment and shall be licensed funeral directors of this state, under this chapter, and shall, at the time of their appointment to the board, be operators of funeral establishments in this state. If the license of a member of said board as a funeral director or embalmer should be revoked or suspended, such member shall automatically, by reason of such revocation or suspension, become ineligible to serve as a member of the board, and a new member, properly qualified, must be selected in the same manner provided for appointment to the board. Should a member fail to qualify after appointment, then he shall automatically become ineligible to serve as a member of the board, and a new member, properly qualified, shall be appointed and shall serve the remainder of the term of the member so terminated. Each member of the board must remain an active practicing funeral director or embalmer and funeral establishment operator during his tenure of service on the board. Each member may be reappointed for one additional two-year term, as provided by this chapter, or new members may be appointed under the terms of this chapter. It is the intent of this chapter that no person shall serve more than a total of four years as a member of the board. In no event shall more than one member of the Alabama Board of Funeral Service reside in one district. At each meeting where

nominations are made for members of the board, only one licensed funeral director of each establishment shall have the right to vote for nominees.

Any state board member who is elected to the national board shall, upon his election, begin to serve the state board in an ex officio capacity only, for the duration of his national board term. A member, properly qualified, shall be selected in the same manner provided for appointment to the state board and shall serve the remainder of the term of the member elected to the national board.
(Acts 1975, No. 214, p. 705, § 3; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-21. Membership districts.

There are hereby created, for the purpose of this chapter, seven geographical districts which shall be identical with the seven congressional districts as fixed and established by Section 17-20-1, as may be amended. It is the purpose and intention of this section to provide that one member of the Alabama Board of Funeral Service shall be selected from each district, which shall be geographically identical with the congressional districts, and that three nominees to the Governor for appointment to said board shall be made from each said district.
(Acts 1975, No. 214, p. 705, § 4.)

§ 34-13-22. Meetings; quorum.

The Alabama Board of Funeral Service shall hold not less than one meeting quarterly for the purpose of examining applicants for licenses, such meeting to be held at such time and place as the board may determine after notice of such meeting has been given in the manner prescribed herein at least 15 days prior to such meeting. The board shall not have power to delegate to any person who is not a member of the board the authority to conduct or administer an examination for a license, it being the intent of this chapter that only members of the board may conduct or administer examinations for licenses. The board may hold such other meetings as it may deem necessary. Five or more members shall comprise a quorum. The board shall not meet on the premises of any embalming school or college of mortuary science; and, if any such meeting is held, all the proceedings of such meeting shall be void. If any application for license under this chapter are pending, the applicant or applicants shall be afforded the right to take the examination required hereunder at the date and place of such quarterly meeting.
(Acts 1975, No. 214, p. 705, § 5; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-23. Officers; procedural rules and regulations; compensation of members; executive secretary; disposition of fees and fines.

(a) The board appointed under the provisions of this chapter and each successor thereto is authorized to select from its own membership a chairman and to adopt and promulgate such rules and regulations for the transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the funeral service profession in the State of Alabama as it may deem expedient and consistent with the laws of this state and for the public good.

The chairman of the board shall preside at all meetings of the board unless otherwise ordered, and he shall exercise and perform all duties and functions incident to the office of chairman of the board.

The board may select also from its own membership a vice-chairman, a secretary and a treasurer. No two offices shall be held by the same person. The chairman and vice-chairman shall not be of the same race.

(b) The treasurer shall give bond to the State of Alabama in the sum of \$10,000, and any premium payable for the bond shall be paid from the funds of the board. The bond shall be deposited with the Treasurer of the State of Alabama.

(c) Board members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the board, and, in addition thereto, they shall receive the sum of \$50 per diem for every day not to exceed 10 days per year actually spent by the member upon the business of the board. The board may employ an executive secretary and associate executive secretary who shall each receive and be paid an annual salary to be fixed by the board, but not to exceed the salary level established and paid to cabinet officers in the state government. The salary shall be paid on a monthly basis. In addition, the executive secretary and associate executive secretary shall receive his or her necessary traveling and other incidental expenses as are incurred in the performance of duties, and all expenses, per diem and compensation shall be paid out of the receipts of the board. At no time shall the operation of the board be an expense to the state, and at no time shall expenses of the board exceed the

receipts hereof.

(d) The executive secretary of the board shall have complete supervision and be held responsible for the direction of the office of the board and shall have supervision over field inspection and enforcement of the provisions of this chapter and shall be responsible and answerable to the board. The associate executive secretary shall assist the executive secretary and perform such other duties as may be assigned to him or her by the board. The executive secretary and associate executive secretary shall not be of the same race.

(e) The executive secretary of the board shall keep a record in which shall be registered the name and business address of every person to whom licenses have been granted in accordance with this chapter, the number and date of the license and the date of each renewal. Upon request to do so, the executive secretary of the board shall supply each person licensed for the practice of embalming and funeral directing with a list of all persons and establishments holding a license under this chapter, then in force, giving the names of the persons, their business addresses and the numbers of their licenses.

(f) It shall be the duty of the executive secretary of the board to prepare under the direction of the board and cause to be printed all forms required by this chapter to be prescribed by the board. All notices required to be mailed by any provision of this chapter shall be directed to the last known post office address of the party to whom the notice is sent.

(g) The executive secretary shall serve at the pleasure of the board and shall perform duties as may be necessary for the proper functioning of the board as the board may determine or as may be prescribed in this chapter. During and for three years after his employment, neither the executive secretary nor any member of his family within the third degree shall be employed by any funeral establishment.

(h) All fees and fines received under the provisions of this chapter shall be paid into a special fund in the State Treasury to be known as the Alabama State Funeral Directors and Embalmers Fund, which is hereby created, for the necessary and proper expenses of the board, and for a reasonable reserve for future use by the board. All moneys in the fund are hereby appropriated, as a continuing appropriation, to the Alabama Board of Funeral Service to be used for carrying out any of the provisions of this chapter.

(i) Each member of the board, the executive secretary, the associate executive secretary and designated employees of the board appropriately identified are authorized on complaint or for inspection purposes to enter the office, premise, establishment or place of business of any funeral service licensee in the State of Alabama or any office, premises, establishment or place where the practice of funeral service is carried on, or where the practice is advertised as being carried on, for the purpose of inspecting the office, premises or establishment and for the purpose of inspecting the license and registration of any funeral service licensee and apprentice trainee operating therein.

All members of the board or designated employees of the board are hereby authorized to serve and execute any process issued by any court under the provisions of this chapter and to serve and execute any papers or process issued by the board or any officer or member thereof under authority of this chapter.

(j) The board may employ clerical assistants and employees or other help as may be necessary to carry out the provisions of this chapter, and the terms and conditions of employment shall be determined by the board. The board may establish and equip an office from which the provisions of this chapter may be carried out.

(Acts 1975, No. 214, p. 705, § 6; Acts 1981, No. 81-200, p. 234, § 4; Acts 1995, No. 95-517, p. 1047, § 1.)

§ 34-13-24. Oath of members.

Every member of the board, after appointment and before entering upon his duties, shall make oath before some officer competent to administer oaths, that he is legally qualified to become a member of said board under the provisions of this chapter and that he will faithfully perform the duties of such office, a copy of which shall be filed in the office of the Secretary of State.

(Acts 1975, No. 214, p. 705, § 7.)

§ 34-13-25. Hearings to be public; record of proceedings.

All hearings provided for by this chapter shall be open to the public, and a report and record of proceedings of each hearing shall be made at the expense of the board. A copy of such report and record shall be furnished to any interested party, upon request and tender to the executive secretary of the board of the reasonable cost of preparation thereof.

(Acts 1975, No. 214, p. 705, § 31.)

§ 34-13-26. Promulgation of rules and regulations; authority to hold hearings; restraining of violations.

(a) The board has the power to adopt and enforce for the protection of the public health, safety and welfare reasonable rules and regulations.

(b) The rules and regulations of the board shall not become effective until they have been published and discussed at a public hearing and have been filed in the office of the Secretary of State; and, when so filed, such rules and regulations shall be in full force and have the effect of law. The board shall mail notice of such hearing to each licensee under this chapter 15 days before the date of such hearing.

(c) All rules and regulations adopted by the board shall be referenced to the section or sections of this chapter which set forth the legislative standard which it interprets or to which it applies. Every rule and regulation shall be in writing, promulgated by an order, state its effective date, indexed in a permanent book which shall be a permanent record, and a true copy shall be filed in the office of the Secretary of State of Alabama. A copy of every order promulgating a rule, regulation or other order containing a requirement of general application shall be mailed to each licensee by first class mail. The failure of a licensee to receive a copy of the rule, regulation or order shall not exempt or excuse him from the duty of compliance with the valid rules, regulations or orders lawfully issued.

(d) The board shall have power to hold hearings, conduct investigations, subpoena witnesses, administer oaths and take testimony in order to carry out the provisions of this chapter.

(e) A court of competent jurisdiction may, upon application of the board, restrain violations or refusals to comply with the provisions of this chapter or the regulations of the board.
(Acts 1975, No. 214, p. 705, § 34.)

§ 34-13-27. Seal; scope of rules and regulations.

The board shall adopt a common seal, which may be altered as often as said board may desire, and may adopt and enforce, for the protection of the public health, safety and welfare, reasonable rules and regulations relating to:

(1) The practice of the profession of embalming, including, but not limited to, solicitation of business;

(2) The practice of the profession of funeral directing, including but not limited to, solicitation of business;

(3) The sanitary condition and physical facilities of funeral homes, mortuaries and funeral establishments where the profession of embalming and funeral directing is carried on, with particular regard to plumbing, sewage, disinfecting, ventilation and equipment;

(4) Carrying out generally the various provisions of this chapter for the protection of the peace, health, safety and welfare of the public; and

(5) Carrying out a program for training of apprentice embalmers and apprentice funeral directors.
(Acts 1975, No. 214, p. 705, §§ 8, 34.)

§ 34-13-28. Annual report.

On or before April 1 of each year, the board shall report to the Governor and to the Legislature a full statement of the receipts and disbursements of the board during the preceding year and full statement of its doings and proceedings and such recommendations as it may deem proper.
(Acts 1975, No. 214, p. 705, § 36; Acts 1981, No. 81-200, p. 234, § 4.)

§ 34-13-29. Audit and payment of expenses.

All necessary expenses incurred in giving examinations to applicants and incidental to the renewal of licenses and all necessary expenses incurred in education and enforcing the provisions of this chapter shall be audited by the Examiner of Public Accounts and paid from the funds provided for in this chapter in the same manner as other claims against the state are paid after due approval thereof by the chairman and executive secretary of the board.

(Acts 1975, No. 214, p. 705, § 37.)

§ 34-13-30. Transfer of funds. Repealed by Acts 1981, No. 81-200, p. 234, § 5, effective April 7, 1981.

§ 34-13-31. Appeal from decision of board.

(a) Whenever, by decision, final order or other final determination upon any public hearing provided

for by this chapter, a party to such hearing shall feel aggrieved, an appeal may be taken to the circuit court for the county within which such party resides or, if he is not a resident of Alabama, then to the circuit court for the county within which the hearing was held. However, if there is more than one appellant, the circuit court having jurisdiction to hear the appeal of the first appellant filing a notice of appeal shall have jurisdiction to hear all appeals arising from the same hearing, irrespective of the place of residence of the appellants.

(b) On taking and perfecting an appeal to the circuit court having jurisdiction thereof, the court shall proceed as in other cases.

(c) All appeals shall be taken within 30 days from the date of the action or order made the basis of the appeal and shall be granted as a matter of right and be deemed perfected by filing with the board a bond for security of costs of said appeal. Upon filing of a verified petition and hearing thereon, the court may, in its discretion, stay the order appealed from pending final judicial review. No new or additional evidence may be introduced in the circuit court except as to fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, rule or ruling appealed from. The court shall otherwise hear the case upon the record as certified to the court by the executive secretary of the board and shall set aside the order, rule or action appealed from if the court finds that the board erred to the prejudice of the appellant's substantial rights in its application of the law; or, the order, decision or award was procured by fraud or was based upon a finding of facts contrary to the substantial weight of the evidence, or that the order was arbitrary, capricious or inconsistent with respect to any of the material issues involved; or that the board failed in its order to find sufficient facts as to each material issue involved to enable the court to determine the basis for the conclusion of the board. The court may, instead of setting aside the order, remand the case to the board for further proceedings in conformity with the direction of the court. The court may, in advance of judgment and upon a sufficient showing, remand the cause to the board for the purpose of taking additional testimony or other proceedings.

(d) An appeal may be taken from the judgment decree or any appealable order of the circuit court to the Supreme Court of this state. Appeals to the Supreme Court shall be taken, perfected, heard and determined in the manner prescribed by law and the Alabama Rules of Appellate Procedure for taking, perfecting, hearing and determining appeals to the Supreme Court.
(Acts 1975, No. 214, p. 705, § 32.)

ARTICLE 3. LICENSES, EXAMINATIONS AND REGISTRATION.

DIVISION 1. GENERAL PROVISIONS.

§ 34-13-50. Board recognition of schools and colleges.

The Alabama Board of Funeral Service shall recognize and approve and accept applicants for examination from only those established embalming schools or colleges which are recognized by the board. The board shall recognize and approve any embalming school or college approved by the American Board of Funeral Service Education, and any additional embalming schools or colleges which, in the judgment of the board, offer courses of study which generally include the subjects set out in Section 34-13-94. The Alabama Board of Funeral Service shall not examine or issue an embalmer's license to any person who does not hold a certificate of graduation from an embalming school or college meeting the criteria or standards as defined in this section.

(Acts 1975, No. 214, p. 705, § 20.)

§ 34-13-51. Reciprocity of licenses.

(a) The board may, but shall not be required to, recognize and issue, without examination, and upon payment of a fee of one hundred dollars (\$100) for each license, a reciprocal license for the practice of funeral directing or embalming to any person licensed as a funeral director or embalmer by any state, if the board makes an individual determination that the applicant's qualifications meet or exceed the minimum qualifications required for funeral directors or embalmers in this state and that a written examination of such applicant would be superfluous.

(b) Applications shall be made on forms prescribed and furnished by this board. An applicant holding a funeral director or embalmer license from another state, and applying for a funeral director or embalmer license in Alabama will be considered for licensing by reciprocity.

(c) The board shall at the time of the application make a reasonable determination that the applicant is a legal resident of the United States. The board reserves the right to require applicants for reciprocity to submit to a personal interview or a written examination relating to the law as it pertains to the regulation of the funeral service profession in Alabama.

(Acts 1975, No. 214, p. 705, § 19; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Act 2006-598, § 1.)

§ 34-13-52. Execution and display of licenses.

(a) Licenses under this chapter shall be granted to individuals upon the qualification and successful examination of the individual applicant and shall specify the name to whom it is issued.

(b) Every license issued under this chapter shall be signed by the chairman and executive secretary of the board and shall be displayed in the place of business or employment of the licensee.

(Acts 1975, No. 214, p. 705, § 21.)

§ 34-13-53. Renewal of licenses; authorization; attestation of identity; records.

(a) Every licensed funeral director, every licensed embalmer, and every licensed operator shall pay annually a fee for renewal of his or her license. The renewal fees shall be set by the board at a rate not to exceed fifty dollars (\$50) for licensed embalmers and funeral directors and shall not exceed one hundred dollars (\$100) for licensed operators.

(b) All licenses granted under this chapter shall expire on October 1, following their issuance or renewal, and shall become invalid unless renewed as provided in this section. There shall be no proration of licenses.

(c) The board shall mail on or before August 1 of each year to each licensed funeral director, to each licensed embalmer, and to each licensed operator addressed to him or her at his last address, a notice that his or her renewal fee is due and payable and that, if such fee is not paid by October 1, the license shall lapse.

(d) At the time, or before, a licensee changes place of employment, residence address, or makes any other change in status which is of record at the board office, the licensee shall report such change of status, on a form provided by the board, to the executive secretary.

(Acts 1975, No. 214, p. 705, § 22; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, §

1; Acts 1983, No. 83-746, p. 1235, § 1; Act 2002-239, § 2.)

§ 34-13-54. Transferability.

No license to an embalmer, a funeral director or a funeral establishment granted under or regulated by this chapter shall be transferable or assignable.

(Acts 1975, No. 214, p. 705, § 10.)

§ 34-13-55. Reinstatement of lapsed licenses.

When a licensee, for any reason, has allowed his license to lapse, the board hereby is given power of reinstatement, in its discretion, if application therefor is made within a period of six months from the lapse and is accompanied by payment of all penalties and lapsed fees, from the time of the lapse to date of reinstatement. The penalties to be paid to the board shall be \$25.00 to reinstate licenses which have lapsed.

After said six-month period has elapsed, such license may be reinstated only by complying with the provisions hereinabove relating to the issuance of an original license in addition to payment of all lapsed fees and penalties.

(Acts 1975, No. 214, p. 705, § 24; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-56. Grounds for revocation, suspension or refusal to issue or renew licenses; fines.

(a) The board may refuse to grant, refuse to renew, or suspend or revoke a license after proper hearing and notice to the licensee, upon the licensee's being found guilty of any of the following:

(1) Conviction of a crime involving moral turpitude.

(2) Unprofessional conduct, which is defined to include any of the following:

a. Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer.

b. False or misleading advertising as a funeral director or embalmer or knowingly engaging in any advertising which is misleading or inaccurate in any material particular.

c. Solicitation of dead human bodies by the licensee, his or her agents, assistants, or employees, whether the solicitation occurs after death or while death is impending.

d. Employment by the licensee of a person or persons to be used for the purpose of obtaining or soliciting funeral directing or embalming business.

e. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time or on commission, for the purpose of calling upon individuals or institutions where a death has occurred or is imminent by whose influence dead human bodies may be turned over to a particular funeral director or embalmer or funeral establishment, or both.

f. The buying of business by the licensee, his or her agents, assistants, or employees.

g. Gross immorality.

h. Aiding or abetting an unlicensed person to practice funeral directing or embalming.

i. Using profane, indecent, or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relative of a deceased whose body has not yet been interred or otherwise disposed of.

j. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any mausoleum or cemetery.

k. Any violation of this chapter.

- l. Any violation of state law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.
- m. Fraud or misrepresentation in obtaining a license.
- n. Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody thereof.
- o. Performing services in a professional capacity as a funeral director or embalmer, or both, for any unlicensed funeral establishment operating in violation of this chapter.
- p. Being intoxicated or under the influence of illegal drugs while on duty at a funeral establishment.
- q. Willfully retaining or willfully failing to account for any property of a decedent.
- r. Knowingly and willfully signing a certificate as having embalmed or prepared a body for burial when, in fact the services were not performed by the licensee.

(b) In addition to the disciplinary actions authorized in subsection (a), the board may levy and collect administrative fines for violations of this chapter or the rules or regulations of the board in an amount not to exceed five hundred dollars (\$500) for each violation.

(Acts 1975, No. 214, p. 705, § 25; Acts 1995, No. 95-517, p. 1047, § 2.)

§ 34-13-57. Secretary to mail notices of examination.

The executive secretary of the board shall mail notices to all applicants and all established funeral firms in the state 15 days before an examination, listing the names of all persons admitted by the board to take the examination and setting out the time and place of the examination.

(Acts 1975, No. 214, p. 705, § 39.)

DIVISION 2. FUNERAL DIRECTORS.

§ 34-13-70. License required; filing of application; fee; time and place for examination.

(a) No person shall engage in, or attempt to engage in, the practice or profession or business of a funeral director unless licensed to do so by the Alabama Board of Funeral Service. The board hereby is granted authority to issue license to funeral directors.

(b) Any person desiring to engage in the business, profession or practice of funeral director shall make application to the board and shall accompany his application by a fee to be established by the board, not to exceed \$100.00, whereupon the board shall fix the time and place for the examination of the applicant and shall notify the applicant thereof.

(c) In addition, the board shall establish and charge a reasonable examination fee, based on actual costs, for each applicant who sits for an examination, however, in no event shall the fee exceed \$25.00 above the actual cost of preparing and administering such exam.

(Acts 1975, No. 214, p. 705, §§ 9, 40; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Acts 1991, No. 91-196, p. 360, § 3.)

§ 34-13-71. Form and contents of application.

An application for a license as a funeral director shall be in writing and verified on a form provided by and addressed to the board and filed with the secretary of the board. The application must specify the address of the applicant and must be accompanied by the affidavits of at least two licensed embalmers or funeral directors to the effect that the applicant is of good character and has qualified himself to become licensed as prescribed by this chapter.

(Acts 1975, No. 214, p. 705, § 12.)

§ 34-13-72. Qualifications of applicants for examination.

An applicant for a funeral director's license is entitled to an examination if he:

(1) Is a citizen of the United States;

(2) Is at least 18 years of age;

(3) Has had practical experience as an apprentice for not less than two years within a period of three consecutive years, excluding time lost by interruptions caused by the active duty of the applicant in the military service of the United States or its allies during war or national emergency and excluding time lost by interruptions which the board deems excusable as caused by circumstances beyond the control of the applicant; and

(4) Has completed apprenticeship not more than two years prior to taking the examination, excluding time lost under the circumstances mentioned in subdivision (3) of this section.

(Acts 1975, No. 214, p. 705, § 13; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-73. Scope of examination.

The applicant for a funeral director's license shall, before the application is granted, successfully pass an examination upon, but not limited to, the following subjects: Funeral directing, the manners in which death may be determined, the laws governing the preparation and disposal of human dead bodies and the shipment of bodies dying from infectious or contagious diseases and local health and sanitary ordinances in relation to funeral directing. Said examination shall be prepared and graded by the board, which may review and adopt, in whole or in part, examination questions or forms proposed by the American Board of Funeral Service Education if it finds, in the discretion of the board, that such questions are appropriate and adequate.

(Acts 1975, No. 214, p. 705, § 14.)

§ 34-13-74. Application by surviving spouse upon death of funeral director; operation under special permit by operator.

(a) When a licensed funeral director dies leaving a licensed funeral business with no licensed funeral director, the surviving spouse, or a surviving child of legal age, shall have the right to make application for examination as a funeral director. The application shall be in writing, on a form prescribed by the board, and shall state the facts pertaining to the case. The board may, in its discretion, certify the applicant for the examination prescribed for funeral directors, in which event the requirements with respect to prior experience and apprenticeship shall be waived.

(b) When a licensed funeral director dies leaving a licensed funeral business with no licensed funeral director, the board may issue a special operating permit to the operator of such licensed funeral business for a period of 12 months, with the board having the right to extend said permit an additional reasonable time to afford such operator the opportunity of obtaining a licensed funeral director for such business. The operator shall be required to pay a fee for the issuance of said special operating permit in the amount of \$25.00.

(c) All human dead embalmed for a funeral establishment operating under a special operating permit and all funeral directing operations carried on under said permit shall be in conformance with all the requirements of this chapter which are not in conflict with this section.
(Acts 1975, No. 214, p. 705, § 45.)

DIVISION 3. EMBALMERS.

§ 34-13-90. License required; fees.

(a) No person shall follow, engage in or hold himself out as engaged in the practice as an embalmer unless licensed to do so by the Alabama Board of Funeral Service. The board hereby is granted authority to issue licenses to embalmers.

(b) All persons shall qualify for examination in accordance with the provisions of this chapter and shall be licensed as an embalmer only after due examination by the board and the payment of an examination and license fee to be established by the board, not to exceed \$100.00.

(c) In addition, the board shall establish and charge a reasonable examination fee, based on actual costs, for each applicant who sits for an examination, however, in no event shall the fee exceed \$25.00 above the actual cost of preparing and administering such exam.

(Acts 1975, No. 214, p. 705, § 10; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Acts 1991, No. 91-196, § 3.)

§ 34-13-91. Application for examination.

The applicant for an embalmer's license shall make application to the board and shall present himself at the next meeting of the board for the examination of applicants. The application must be in writing and verified on a form provided by and addressed to the board and must be accompanied by the prescribed fee and by affidavits of at least two licensed embalmers to the effect that the applicant is of good moral character and has met all qualifications required for examination for license as prescribed by this chapter. (Acts 1975, No. 214, p. 705, § 16.)

§ 34-13-92. Qualifications of applicants for license.

In order to qualify for a license as an embalmer, the applicant shall:

(1) Be a citizen of the United States;

(2) Be over 18 years of age;

(3) Be of good character;

(4) Have completed a two-year course of apprenticeship under an embalmer or embalmers licensed and engaged in practice as an embalmer in this state, and the applicant shall have completed the required course of apprenticeship within a period of three consecutive years, excluding time lost by interruption caused by the active duty of the applicant in the military service of the United States or its allies during war or national emergency and excluding time lost by interruptions which the board deems excusable as caused by circumstances beyond the control of the applicant;

(5) Have completed a course of instruction in an embalming school or college which has been approved by the board as defined in Section 34-13-50; and

(6) Have completed the course of apprenticeship not more than two years before the date of examination, excluding time lost under the circumstances mentioned in subdivision (4) of this section.

(Acts 1975, No. 214, p. 705, § 17; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-93. Examination of applicant for license.

The board shall hold a public examination at least once each quarter for the purpose of examining applicants for embalmer's license, as prescribed in Section 34-13-22, at such time and place as the board may determine. Notice of the time and place of the meeting shall be sent to the various applicants by mail at least 15 days before the meeting or examination.

(Acts 1975, No. 214, p. 705, § 15.)

§ 34-13-94. Scope and conduct of examination.

(a) The board shall examine applicants for an embalmer's license in the following subjects:

(1) Mortuary management and administration;

(2) Legal medicine and toxicology;

(3) Public health, hygiene and sanitary science;

(4) Mortuary science, to include embalming technique, in all aspects; chemistry of embalming, color harmony; discoloration, its causes, effect and treatment; treatment of special cases; restorative art; funeral management; and professional ethics;

- (5) Anatomy and physiology;
 - (6) Chemistry, organic and inorganic;
 - (7) Pathology;
 - (8) Bacteriology;
 - (9) Sanitation and hygiene;
 - (10) Public health regulations; and
 - (11) Other courses of instruction in fundamental subjects as may be prescribed by the board.
- (b) All examination papers shall be kept on file by the Alabama Board of Funeral Service for at least three years.
- (c) To constitute a passing grade, an applicant must receive an average mark of not less than 70 percent on all subjects; provided, that where the applicant has received a mark of less than 70 percent in one or more subjects, such applicant shall not be passed, notwithstanding that his average mark may be higher than 70 percent.
- (d) If the board is satisfied that the applicant has the requisite qualifications to practice the occupation of embalming, a license shall be issued to him authorizing him to practice such occupation until October 1 of that year, at which time the license may be renewed as prescribed in this chapter.
- (Acts 1975, No. 214, p. 705, § 18.)

DIVISION 4. FUNERAL ESTABLISHMENTS.

§ 34-13-110. Operation through licensed director or embalmer; change of name.

Any person, corporation, partnership, society or group owning or operating a funeral establishment coming within the provisions of this chapter may do so only through the services of a licensed funeral director or embalmer. No person not licensed as a funeral director or embalmer shall be permitted to perform the functions of a funeral director or embalmer as herein defined or hold himself out to the public as such by reason of his ownership in a funeral establishment or by reason of his ownership of stock owned in or office held in a corporation to own or operate a funeral establishment. After September 10, 1975, no firm or corporation authorized to own and operate a funeral establishment may change or amend its name or charter so as to include in its firm or corporate name the name of any person who is not individually licensed as a funeral director in this state; provided, that the provisions of this sentence shall not be applicable to the name of any firm or corporation owning or operating a funeral establishment on September 10, 1975, so long as such firm or corporation remains under the same ownership. (Acts 1975, No. 214, p. 705, § 40.)

§ 34-13-111. License required; inspections; transfer of license.

(a) No funeral establishment or branch thereof for the preparation, disposition and care of dead human bodies shall be opened or maintained unless duly licensed by the board. No funeral establishment or branch shall be moved without obtaining a new funeral establishment license from the board.

(b) The board shall charge a fee of \$35.00 in addition to the license fee for the first inspection of any funeral establishment seeking a license under Section 34-13-72 made for the purpose of determining whether such funeral establishment has fulfilled the requirements for licensure hereunder. The board shall charge a fee of \$75.00 for each reinspection necessitated by failure of any funeral establishment to pass such first inspection. All funeral establishments and branches shall be inspected by the board, or its representatives, at least once annually, with an inspection fee of \$35.00, and shall meet and conform to the provisions of this chapter and to such other lawful standards and requirements as may be determined by rule of the board in furtherance of the provisions of this chapter; and, for failure to do so, the board may revoke such license in accordance with the procedure set forth in this chapter.

(c) Applications for transfer of a license to another location in the same county shall be made upon blanks furnished by the board and shall be accompanied by a fee of \$25.00. The fee for a new branch or location for a funeral establishment shall be \$250.00. Any change in ownership must be immediately reported to the board.

(Acts 1975, No. 214, p. 705, § 44; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1; Acts 1983, No. 83-746, p. 1235, § 1.)

§ 34-13-112. Employment of embalmer or director by other establishments; supervision and control; licensing of establishment not to license embalmer or director.

No application for a license of a funeral establishment shall be considered which does not show on the application that a licensed funeral director and licensed embalmer are employed by the establishment. This section shall not be construed to require a full-time licensed embalmer at each funeral establishment. No funeral establishment shall be licensed except upon the basis of a licensed funeral director. All embalming must be performed under a licensed embalmer, but such licensed embalmer shall not be restricted from working for more than one funeral establishment.

No licensed funeral director, based upon whose license or licenses a funeral establishment license has been issued, may serve as the regularly employed licensed funeral director at another funeral establishment which is owned by a different person, firm or corporation at the same time for the purpose of qualifying such other establishment under this chapter.

It is hereby declared to be the legislative intent of this chapter that every funeral establishment in this state shall be operated under the full charge, control and supervision of an individually licensed funeral director or a person licensed both as a funeral director and as an embalmer; provided, that this section shall not preclude an unlicensed person from being in charge of the bookkeeping or records of such an establishment. The name of the licensed person to be in charge of each funeral establishment shall be stated on the application for all licenses or renewal of such licenses.

The issuance of a license to operate a funeral establishment to a person who is not individually

licensed as a funeral director or embalmer does not entitle said person to practice embalming or funeral directing, as defined by this chapter, it being the intent of this chapter that such practice may be performed only through individually licensed funeral directors and embalmers; and, in addition to all other grounds for suspension of a funeral establishment license as enumerated in this chapter, a funeral establishment license shall be revoked by the board upon hearing thereon if any person, whether owner, officer, stockholder or otherwise, who is connected with the funeral home shall perform any of the functions of a funeral director or embalmer as defined herein or shall hold himself out as a funeral director.
(Acts 1975, No. 214, p. 705, § 43.)

§ 34-13-113. Application for license; inspection of establishment; issuance of license.

(a) Application for a license to operate a funeral establishment shall be made in writing on a form provided by the board. The application shall be verified by the applicant or, if the applicant is a corporation, firm or other organization, by an officer or member thereof, and shall be accompanied by an application fee to be established by the board, not to exceed \$300.00. The application shall disclose:

- (1) The name and address of the establishment;
- (2) That the establishment is operated by a licensed funeral director and a licensed embalmer or a person licensed both as a funeral director and embalmer;
- (3) A description of the establishment's buildings, equipment and facilities;
- (4) That the establishment has a sanitary, properly equipped embalming room, a place for the conduct of funerals and a casket selection room stocked with an average selection of caskets; and
- (5) Such other information as may be required by the board.

(b) Upon receipt of said application, the board shall make inspection of the funeral establishment. If the board determines that the establishment meets the qualifications prescribed by law, it shall issue the license.

(Acts 1975, No. 214, p. 705, § 41; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-114. Reissuing license when name of establishment changed.

An operator of a funeral establishment licensed under the provision of Section 34-13-113 and who desires to change the name of the establishment may have his license reissued to him, in the changed name, upon application to the board and payment of a fee of \$25.00.

(Acts 1975, No. 214, p. 705, § 23.)

§ 34-13-115. Revocation, suspension or refusal to renew license.

(a) The board may revoke, suspend or refuse to renew a license issued to an operator of a funeral establishment as provided in this chapter.

(b) If, upon a complaint made to it or otherwise, the board has reason to believe that the operator of a funeral establishment has failed to comply with the provisions of this chapter or the regulations of the board, it shall conduct an investigation. If it appears to the board that there is reasonable ground to believe that the operator has failed so to comply, it shall conduct a hearing on the matter. Notice of the time and place of the hearing, setting forth the respects in which failure to comply is charged, shall be sent to the operator no later than 15 days prior to the date set for the hearing. The operator may have the assistance of counsel at the hearing.

(c) If, upon the hearing, the board finds that the operator has failed to comply with the provisions of this chapter or the regulations of the board, it may revoke, suspend or refuse to renew the license.

(Acts 1975, No. 214, p. 705, § 33.)

§ 34-13-116. Penalty for failure to register.

Any person, firm, partnership, society, group or corporation who has control of a funeral home, mortuary, chapel or funeral establishment, as defined in this law, and fails to register same according to the provisions of this chapter, upon conviction, may be fined not less than \$300.00 nor more than \$500.00 for each violation, and each day that said funeral home, mortuary, chapel or funeral establishment is operated shall be deemed to be a separate and distinct violation of this chapter.

(Acts 1975, No. 214, p. 705, § 42.)

DIVISION 4A. CREMATION SERVICES.

§ 34-13-120. License required; affidavit of training, etc.; inspections; records

(a) It shall be unlawful for any person, firm, corporation, association, or entity to operate a crematory or practice cremation without the crematory being licensed as a funeral establishment in accordance with this chapter.

(b) Any funeral establishment performing cremation services shall certify by affidavit to the board that any cremationist conducting cremations has received adequate and appropriate training or experience in the practice of cremation.

(c) The board shall adopt and enforce rules and regulations as may be reasonable and necessary for the operation of crematories to protect the health, welfare, and safety of the people of this state.

(d) The board shall inspect the records and premises of any funeral establishment operating a crematory. In making inspections, the board shall have access to all records, the crematory building, the cremation chambers or furnaces, and the storage areas for human remains before and after cremation, during regular office hours or the hours the crematory is in operation. No prior notification of the inspection is required to be given to the funeral establishment. If any funeral establishment performing cremation services fails to allow an inspection or any part thereof, it shall be grounds for the suspension or revocation of a license or other disciplinary action against the licensee, as the board may deem reasonable and necessary to the extent of the law. The board shall conduct annually a minimum of one unannounced inspection of each licensed funeral establishment performing cremation services.

(e) Each funeral establishment performing cremation services shall keep records as required by the board to assure compliance with all laws relating to the disposition of human remains and shall file annually with the board a report in the form prescribed by the board, describing the operations of the licensee, including the number of cremations made, the disposition thereof, and any other information as the board may, from time to time, require.

(f) Each funeral establishment performing cremation services shall report to the board any maintenance or inspections performed by the manufacturer within 30 days of the maintenance or inspection.

(g) A funeral establishment performing cremation services shall be subject to all local, state, and federal health and environmental protection requirements and shall obtain all necessary licenses and permits from the Alabama Board of Funeral Service, the federal and state Departments of Health and Human Services, and the state and federal Environmental Protection Agencies, or other appropriate local, state, or federal agencies.

(Act 2002-239, p. 498, § 3.)

§ 34-13-121. Cremation procedures; authorization; attestation of identity; records.

(a) Human remains shall not be cremated within 24 hours after the time of death, unless death was a result of an infectious, contagious, or communicable disease and unless the disease is verified and the time requirement waived by a medical examiner, county health director, county coroner, or attending physician where the death occurred.

(b) A cremation authorization form prescribed by the board shall be signed by the authorizing agent and must accompany any request for cremation. A copy of the cremation authorization shall be presented with the body to the crematory before any cremation process may be initiated.

(c) It shall be disclosed to the family member serving as the authorizing agent that he or she, or his or her designee, may witness the transportation of the human remains to be cremated to the crematory. Every funeral establishment performing cremation services that prohibits relatives or the responsible party from viewing the cremation process shall disclose this fact in writing to the person or persons entitled to custody of the remains prior to the signing of any contract.

(d) An authorizing agent has the duty to inform the funeral director of the presence of a pacemaker or other potentially hazardous implant, including any toxic or explosive-type sealed implants in the human remains. The funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker before delivering the human remains to the crematory. Should the cremationist discover the presence of a pacemaker or other hazardous implants in the human remains, the cremationist shall arrange for the removal of the pacemaker or other hazardous implant.

(e) The simultaneous cremation of the human remains of more than one person within the same retort,

without the prior written consent of the authorizing agent, is prohibited. It is hereby the declared intent of this subsection that establishments performing cremations in accordance with this chapter may cremate only dead human remains.

(f) Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process shall be removed from the retort and placed in a separate container and may not be commingled with cremated remains of another person nor shall cremated remains of a dead human be divided or separated without the prior written consent of the authorizing agent.

(g) Each funeral establishment which offers or performs cremations shall maintain an identification system that ensures its ability to identify the human remains in its possession throughout all phases of the cremation process. Upon completion of the process, the cremationist must attest to the identity of the cremated remains, and the date, time, and place the cremation process occurred on a form issued by the board. The form shall accompany the human remains in all phases of transportation, cremation, and return of cremated remains.

(h) Each funeral establishment and cremationist which offers or performs cremations shall maintain a record of all cremations performed, which shall include the name of the decedent, the date of death, the date and time of the cremation, the signature of the cremationist performing the cremation, a copy of the authorization for cremation, a copy of the affidavit attesting to the cremation, and, if the cremation is performed for any other funeral establishment or entity, the identity of this establishment or entity.

(i) Human remains must be delivered to a crematory in a combustible cremation container. Human remains shall not be removed from the cremation container and the cremation container shall be cremated with the human remains, unless the authorizing agent has been informed in writing that the crematory does not cremate metal containers.

(Act 2002-239, § 3.)

§ 34-13-122. Disposition of cremated remains.

(a) The authorizing agent shall provide to the funeral establishment which the cremation arrangements are made a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the funeral establishment offering or conducting the cremation.

(b) Cremated remains shall be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

(c) The authorizing agent is responsible for the disposition of the cremated remains. If, after 60 days from the date of cremation, the authorizing agent or his or her representative has not specified the ultimate disposition or claimed the cremated remains, the funeral establishment or entity in possession of the cremated remains may dispose of the cremated remains in a dignified and humane manner and in accordance with any state, county, or municipal laws or provisions regarding the disposal of cremated remains. A record of this disposition shall be made and kept by the entity making the disposition. Upon disposing of cremated remains in accordance with this section, the funeral establishment or entity in possession of the cremated remains shall be discharged from any legal obligation or liability concerning the cremated remains.

(Act 2002-239, § 3.)

DIVISION 5. APPRENTICES.

§ 34-13-130. Application for issuance of apprentice's certificate; term of apprenticeship.

(a) Every person desiring to engage as an apprentice shall make application as a funeral director's apprentice or an embalmer's apprentice to the board upon a form provided by the board. The application shall state that the applicant is over the age of 16, holds a high school certificate or the equivalent, or is currently enrolled and actively working toward graduation from an accredited high school and is of good moral character. The application must be verified by the oath of applicant and be accompanied by a fee to be established by the board, not to exceed \$20.00. The executive secretary of the board shall, whenever it appears to him that no reason exists for the denial of an application and that the application is regular upon its face, have the power to issue to the applicant a certificate of apprenticeship, without submitting the application to the board. If, however, any doubt exists as to the qualifications of the applicant, the application shall be submitted to the board and may be accepted or rejected by a majority of the board. The period of apprenticeship of a funeral director's apprentice or an embalmer's apprentice must be performed in Alabama under the supervision of a funeral director or embalmer, respectively, licensed by the Alabama Board of Funeral Service.

(b) The regular course of apprenticeship shall be two years, but the apprentice is entitled to two weeks time off each year, without leave of absence from the board. Any applicant for an apprentice certificate or license shall be credited with all time served as such as an apprentice embalmer or funeral director prior to September 10, 1975, upon filing of two affidavits confirming such service by a licensed embalmer or funeral director under whom such service was performed.

(Acts 1975, No. 214, p. 705, § 26; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-131. Annual renewal of certificate.

A certificate of apprenticeship issued as provided for herein shall be signed by the apprentice and shall be renewable annually upon the payment by the holder by October 1 of each year of an annual renewal fee to be established by the board, not to exceed \$20.00. Failure to pay the renewal fee by the prescribed date of any year shall cause the certificate to become delinquent, in which case it shall be renewed only for good cause shown. No person may be granted a certificate of apprenticeship as funeral director's apprentice or embalmer's apprentice, respectively, for more than three consecutive years, excepting as provided. The board shall mail, on or before August 1 of each year, to each registered apprentice at his last known address, a notice that his renewal fee is due and payable and that, if not paid by October 1, his license will lapse.

(Acts 1975, No. 214, p. 705, § 27; Acts 1981, No. 81-200, p. 234, § 4; Acts 1981, No. 81-709, p. 1190, § 1.)

§ 34-13-132. Annual report of apprentices.

All apprentices registered as provided in this chapter shall be under the supervision and control of the board and shall be required to report to the board annually on January 1, upon forms provided by the board, showing the work which such apprentices have performed during the annual period preceding the first of the month on which the report is made, including the number of hours served and the number of bodies the apprentice has assisted in embalming or otherwise prepared for disposition during such period. The information contained in the report shall be certified to as correct by the funeral director by whom the apprentice has been employed during such period.

(Acts 1975, No. 214, p. 705, § 28.)

§ 34-13-133. Leave of absence.

The board has power to grant leaves of absence and to grant extensions thereof to apprentices registered under the provisions of this chapter. However, no credit shall be given to an apprentice upon his apprenticeship for the period during which he is absent from duty on leave, and no more than an aggregate of 12 months' leave of absence shall be granted to any apprentice during the term of his apprenticeship. Application for leave of absence and for extension thereof shall be made by the apprentice upon a form provided by and addressed to the board. Upon the termination of a leave of absence or any extension thereof, the apprentice shall report to the board the fact that he has resumed his duties as an apprentice and

certified to by the funeral director under whom he has resumed his duties or by the embalmer under whom he is apprenticed, confirming this fact. Failure to so report within 30 days after the expiration date of any leave of absence or extension thereof shall automatically cancel the registration of the apprentice. (Acts 1975, No. 214, p. 705, § 29.)

§ 34-13-134. Grounds for suspension and revocation of certificates; reregistration when certificate has lapsed or is revoked.

(a) The board has power to suspend or revoke a certificate of apprenticeship, after notice and upon hearing, where the apprentice is guilty of any of the following acts or omissions:

- (1) Failure to devote not less than an average of 30 hours per week to the duties of his apprenticeship;
- (2) Failure to make an annual report to the board as required by this chapter;
- (3) Absence from duty except on vacation for an aggregate of more than 10 days in any six months or 20 days in any year, without leave of absence granted by the board;
- (4) Gross immorality;
- (5) Being on duty as an apprentice while under the influence of liquor or illegal drugs;
- (6) Disobedience of proper orders or instructions of his superiors;
- (7) Violation of any provision of this chapter or any rule or regulation of the board made under this chapter;
- (8) Soliciting business for a funeral director or for any embalmer; or
- (9) Fraud or misrepresentation in obtaining a certificate of registration as an apprentice.

(b) An apprentice who has allowed his certificate of apprenticeship to lapse or who has had his certificate of apprenticeship suspended or revoked may, within one year after such suspension or revocation, make application for registration but not more than two such registrations shall be allowed by the board. The board may, when the circumstances warrant, allow an apprentice credit under a reregistration for time actually served under a previous registration; except, that if the previous registration has been suspended or revoked upon any of the grounds set forth in subsection (a) of this section, not more than 75 percent of the time previously served shall be credited on the reregistration.

(Acts 1975, No. 214, p. 705, § 30.)

ARTICLE 4. DONOR EYE ENUCLEATION LICENSES.

§ 34-13-150. Issuance.

The Board of Funeral Service is authorized to issue a donor eye enucleation license to any embalmer or funeral director who makes written application to the Board of Funeral Service and complies with its standards, measures and procedures, provided such applicant possesses the educational qualifications, standards of proficiency and fitness prescribed by the board.
(Acts 1976, No. 586, p. 798, § 1.)

§ 34-13-151. Promulgation of standards, procedures, regulations, etc., by Board of Funeral Service.

(a) The Board of Funeral Service is authorized to establish and promulgate standards, measures, procedures and regulations necessary to assure that any licensee under this article possesses the knowledge and technical skills to perform donor eyes enucleations acceptable as good ophthalmological and pathological procedure for the purposes of prohibiting unnecessary mutilation.

(b) The Board of Funeral Service is authorized to further prescribe, establish and promulgate any standards and regulations necessary to effect the provisions of this article.
(Acts 1976, No. 586, p. 798, §§ 2, 4.)

§ 34-13-152. Compliance by licensee with Uniform Anatomical Gift Act.

Any person who holds a donor eye enucleation license shall comply with the applicable provisions of the "Alabama Uniform Anatomical Gift Act."
(Acts 1976, No. 586, p. 798, § 3.)

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Respectfully Submitted
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Agency Response to Significant Items

(A response was not received)